

REPORT
OF THE
ATTORNEY GENERAL
OF THE
State of Florida

From January 5, 1909, to January 1, 1911

PARK TRAMMELL,
Attorney General.



TALLAHASSEE, FLORIDA
1911

LIBRARY
FLORIDA STATE COLLEGE FOR WOMEN
TALLAHASSEE, FLA.

1890-1891
1890-1891
1890-1891

REPORT OF ATTORNEY GENERAL.

STATE OF FLORIDA,
ATTORNEY GENERAL'S OFFICE,
Tallahassee, December 31, 1910.

Hon. Albert W. Gilchrist,
Governor of Florida.

SIR :—

Agreeable to the policy adopted by this department, I have the honor to submit herewith my report as Attorney General of the State covering the period beginning January 5th, 1909, and ending December 31st, 1910 :

GENERAL SCOPE OF DUTIES.

During the period of this report I have endeavored to perform such duties as were incumbent upon me as legal adviser to the administrative officers of the State, as the attorney for the State in all criminal cases before the Supreme Court, as the legal representative of the Commonwealth in all civil litigation in all courts, as Supreme Court Reporter, and in the various other matters incident to and connected with the legal department of the State.

Believing that the Attorney General should as far as possible relieve the Trustees of the Internal Improvement Fund and the Board of Drainage Commissioners from the necessity of employing special counsel to serve these Boards, I volunteered at the beginning of my term of office to serve these Boards as legal counsel, and, agreeable to the wishes of the members of said Boards, have rendered such legal services as were required by them. With but little assistance I have rendered all legal opinions and prepared all contracts and documents appertaining to the affairs administered by these Boards, and have represented the Trustees in their litigation. The

LIBRARY
FLORIDA STATE COLLEGE FOR WOMEN
TALLAHASSEE, FLA.

Trustees have deemed it advisable, on account of the magnitude and the volume of the litigation, to employ additional counsel part of the time; however, I am pleased to report that the expense for additional counsel employed since I became Attorney General, two years ago, has not exceeded a total of seventeen hundred dollars on account of the Internal Improvement Fund and three hundred dollars for the Drainage Board. These amounts do not include the fee paid Hon. W. S. Jennings in the six drainage suits which he was employed to take charge of upon a fee basis in the spring of 1908, which was prior to my incumbency.

SERVICE ON BOARDS.

In addition to the foregoing duties performed by me, I have, as required by law, served as a member of the following Boards, to-wit: Board of Drainage Commissioners, the Trustees of the Internal Improvement Fund, the Board of Pardons, State Board of Education, Board of Insurance Commissioners, State Board of Assessors, the Board of Commissioners of State Institutions, and the State Canvassing Board. As these Boards deal extensively with the problems of state, a considerable part of my time has necessarily been occupied in meeting the responsibilities upon me as a member of each of them.

OFFICIAL OPINIONS.

Within this period I have, as legal adviser to the administrative officers, rendered approximately two hundred written opinions touching upon various legal questions and the administration of the affairs of state. Have also frequently given oral opinions when the officer seeking my views did not regard a written opinion necessary. I shall not undertake to set out herein all of the opinions prepared, but will incorporate elsewhere in this report a few only of the many touching upon matters of general interest.

UNOFFICIAL OPINIONS.

Within the past two years I have received no less than two thousand requests asking for my opinion upon matters touching the duties of city, district and county officers, and for opinions upon other legal questions. While it is not, under the law, the duty of the Attorney General to give legal opinions to city, district and county officers nor to private citizens, yet I have, in the interest of an efficient and uniform administration of the laws of the State, and as a matter of courtesy to those making inquiry, promptly and as fully as time would permit answered these inquiries, giving my view upon the legal points in question. Elsewhere in this report will be found a few of these unofficial opinions.

INVESTMENT OF SCHOOL FUND.

During the year 1909 the State Board of Education adopted the policy of investing the State School Fund in county and municipal bonds. This change from the old plan of investing this fund exclusively in State securities has very materially added to the responsibilities and work of this office, as it is necessary for the Attorney General to pass upon the legality of each bond issue offered to the Board before a purchase is made or the bonds rejected.

CIVIL CASES.

Under this heading, elsewhere in this report, will be found a list of the civil cases handled by this office during the biennial period, some of which have been terminated, while others are still pending. It will be noticed that the greater part of the civil litigation has arisen under the revenue laws of the State. Among these civil cases of importance may be mentioned the five different suits instituted by the Florida Railway, seeking to have declared unconstitutional the railroad assessment law and to enjoin for alleged discriminations the collection of the taxes

upon its railroad and property for the assessment of 1905, 1906, 1907, 1908 and 1909. Three of these suits were pending at the time I entered upon the duties of Attorney General in 1909. The other two were instituted in 1909 and 1910. In the early part of 1910 issue was joined in all of these suits and a day set for the taking of testimony. At this stage of the cases the points of difference were adjusted, resulting in the Florida Railway paying up all of its back taxes, amounting to approximately twenty-three thousand dollars.

The three suits now pending in the Supreme Court against certain sick and funeral benefit insurance companies are of no little importance to the State. The question raised by the defendant companies is that the law requiring the payment of a license tax of 2 per cent. upon the gross annual receipts does not apply to the sick and funeral benefit companies. On the part of the State I procured judgment against the companies in the Circuit Court. If the decision of the trial court is sustained by the Supreme Court, the State will recover about twenty-five thousand dollars from these and other companies on back taxes.

Elsewhere in this report will be found a list of the suits in which the Trustees of the Internal Improvement Fund and the Board of Drainage Commissioners are parties, and the status of the same.

CRIMINAL CASES.

During the two years I have, with the assistance of my secretary, prepared briefs and such other papers as were necessary and represented the State before the Supreme Court in eighty-one criminal and habeas corpus cases. Of this number forty were affirmed, nineteen reversed, nine dismissed for failure of plaintiff in error to perfect the appeal, and there are thirteen criminal cases now on my docket. I incorporated herein a table showing these cases.

INDEXING OF LAWS AND JOURNALS.

As required by law, this department, following the adjournment of the last session of the Legislature, indexed and side-noted the session laws, also indexed the Journals of the Senate and House of Representatives. Both my secretary and clerk devoted practically all of their time to this work for some six or eight weeks, and within sixty days after the close of the session the Laws and Journals were properly indexed and were in print.

SUPREME COURT REPORTER.

The Attorney General is, under the provisions of our State Constitution, made Reporter for the Supreme Court. The duties devolving upon me as such Reporter requires that I have edited all of the decisions of the Supreme Court. To do this requires that I have read in my office each and every decision of the Court, and have these decisions made up into volumes and properly indexed. This work requires expert proof-reading, and the highest degree of accuracy, combined with a sufficient knowledge of the law to properly classify and index the different subjects. My secretary, who is an attorney at law, and my clerk, who is an experienced printer and proof-reader, under my supervision execute to a large extent this work. During the period covered by this report I have reported the decisions of the Court comprising the June Term, 1908, January Term, 1909, June Term, 1909, and January Term, 1910, comprising the 56th, 57th, 58th and 59th volumes of the Supreme Court Reports. The June Term for 1910 does not end until January 9th, 1911; therefore, this term cannot be reported until after that date. The Florida Supreme Court reports are published up to the present term.

EXPENSES OF DEPARTMENT.

The expense of this department is restricted to the salary of the secretary, salary of the clerk, the incidental

expenses of the department and the purchase of books and bookcases. I am including herein a statement of these items of expense.

With this review in a general way of the work of this department, I respectfully submit this report in entirety for the consideration of Your Excellency.

PARK TRAMMELL,
Attorney General.

APPROPRIATIONS AND EXPENDITURES.

Appropriations.

For the first six months, 1909—

Clerk	\$ 450.00
Secretary	900.00
Incidental expenses	100.00

For the last six months, 1909—

Clerk	600.00
Secretary	900.00
Incidental expenses	250.00
Purchase of books and bookcases.....	125.00

For the year 1910—

Clerk	1,200.00
Secretary	1,800.00
Incidental expenses	500.00
Purchase of books and bookcases.....	250.00

Expenses.

Clerk for years 1909 and 1910.....	\$2,250.00
Secretary for years 1909 and 1910.....	3,600.00
Incidental expenses, 1909 and 1910.....	403.18
Books and bookcases, 1909 and 1910.....	155.60

ITEMIZED STATEMENT.

*Incidental Expenses, Office of Attorney General,
1909 and 1910.*

1909.

January	—John McDougal, postmaster, stamps.	\$ 2.00
	J. F. Hill, letter baskets and files...	2.00
	E. W. Clark, stationery.....	1.75
	Western Union Telegraph Co., telegrams	2.23
February	—P. W. Wilson, cloth and oil cloth for typewriter table	.66
	D. R. Cox Furniture Co., furniture polish	.25
	Capital Publishing Co., binding book	1.00
	Capital Publishing Co., stitching book	.75
	Western Union Telegraph Co., telegrams	.89
	Southern Express Co., express.....	1.50
March	—John McDougal, postmaster, stamps.	3.00
	John McDougal, postmaster, stamps.	3.50
	John McDougal, postmaster, stamps.	12.00
	(300 official reports mailed.)	
April	—John McDougal, postmaster, stamped envelopes	31.92
	John McDougal, postmaster, stamps and postage due.....	.28
May	—Southern Express Co., express.....	1.05
	Western Union Telegraph Co., telegrams	2.23
	John McDougal, postmaster, stamps.	5.00
	H. & W. B. Drew Co., index books...	2.50

1909.

June	—Western Union Telegraph Co., telegrams	.64
	E. W. Clark, index book	.45
	T. L. Spence, making key for office..	.50
July	—Owen Typewriter Co., typewriter ribbons	2.00
	Southern Express Co., express.....	.45
	H. & W. B. Drew Co., office docket..	5.00
August	—E. W. Clark, brief, tablets	.40
	John McDougal, postmaster, stamps	3.02
	Southern Express Co., express.....	1.50
	Southern Express Co., express.....	.45
	Western Union Telegraph Co.....	.50
	Expenses trip to Jacksonville and return to investigate title to certain land used by Blind, Deaf and Dumb Institute, also to investigate the matter of the property of Mrs. Lindsey, an inmate of the Florida Hospital for the Insane	15.70
September	—John McDougal, postmaster, stamped envelopes	21.24
	John McDougal, postmaster, stamps	3.00
	J. W. Corbett, oil cloth mat.....	.60
	Southern Express Co., express.....	.63
	John McDougal, postmaster, stamps	3.00
October	—Capital Publishing Co., filing cases.	2.10
November	—Southern Express Co., express.....	.60
	John McDougal, postmaster, stamps	3.02
December	—Western Union Telegraph Co., telegrams	.50

1910.

January	—E. W. Clark, stationery	\$.20
	Western Union Telegraph Co., telegrams	.25
	John McDougal, postmaster, stamps	3.00
February	—Western Union Telegraph Co., telegrams	1.31
	H. & W. B. Drew Co., Underwood typewriter	91.25
	John McDougall, postmaster, stamps and postage due	3.08
March	—Owen Typewriter Co., typewriter ribbons	2.00
	John McDougal, postmaster, stamped envelopes and stamps	28.48
	Capital Publishing Co., typewriter paper	2.60
	Southern Express Co., express	1.37
	Western Union Telegraph Co., telegrams	1.44
April	—Western Union Telegraph Co., telegrams	2.41
	Southern Express Co., express	1.96
	Capital Publishing Co., paper and files	3.00
	B. F. Willis, proof-reading	11.65
May	—John McDougal, postmaster, stamps and postage due	5.08
	H. M. Ash & Co., exchange on typewriter	50.00
July	—Western Union Telegraph Co., telegrams	2.26
	John McDougal, postmaster, stamps	3.04
	J. F. Hill, legal tablets	.75
	Western Union Telegraph Co., telegrams	.84

1910.

September—John McDougal, postmaster, stamps	3.04
Capital Publishing Co., slips for index	1.00
Western Union Telegraph Co., telegrams	1.85
D. R. Cox Furniture Co., one office hat rack	1.50
Yaeger-Bethel Hardware Co., cuspidors	1.50
E. W. Clark, stationery	.55
October —John McDougal, postmaster, stamps and stamped envelopes	24.28
Western Union Telegraph Co., telegrams	.93
H. M. Ash & Co., typewriter stand..	3.50
S. A. L. Ry. Co., freight on stationery	1.02
Drayage on stationery	.25
November —John McDougal, postmaster, stamps	3.00
Southern Express Co., express.....	.80
December —Western Union Telegraph Co., telegrams	4.18
Total	\$403.18

CIVIL CASES.

*Circuit Court of the Fourth Judicial Circuit of Florida,
in and for St. Johns County.*

Mary Dewhurst, Complainant,

Vs.

*The Board of Control and the State
Board of Education et al.*

This is a suit instituted in July, 1910, wherein the complainant seeks to recover the possession of a certain lot within the enclosure of the Deaf and Dumb Institute at St. Augustine. The complainant alleging that said lot belongs to her, while the State denies her rights in said lot. The suit is now pending, the issues not having yet been tried.

*Circuit Court of the Fourth Judicial Circuit of Florida,
in and for Clay County.*

O. A. Buddington, Complainant,

Vs.

*E. N. Holt, Tax Collector of Clay
County, and A. C. Croom, Comptroller of the State of Florida, Defendant.*

This was a suit instituted by O. A. Buddington against E. N. Holt, Tax Collector, and A. C. Croom, Comptroller, seeking an injunction to restrain the collection of a license tax on a certain water plant and mains owned by the said Buddington in the town of Green Cove Springs, Fla. The Attorney General and Mr. George W. Geiger, attorney for the county, prepared and interposed a demurrer to the complainant's bill of complaint, and upon a hearing of the demurrer the same was sustained. No further action has been taken by complainant.

*In the Circuit Court of the United States for the Northern
District of Florida. In Chancery.*

*The George E. Wood Lumber Co., a
Corporation, Complainant,
Vs.*

*J. W. Johnson, Tax Collector, Holmes
County, Florida.*

This was a suit instituted by the George E. Wood Lumber Company against J. W. Johnson, Tax Collector of Holmes County, seeking an injunction against the collection of taxes upon approximately 175,000 acres of land, upon the ground of alleged discrimination. A demurrer to complainant's bill was prepared and interposed by the Attorney General and Mr. D. J. Jones, attorney for the county. Upon a hearing before Judge Shepard, at Pensacola, defendant's demurrer was sustained. No further action has been taken by complainant.

*Circuit Court of the Second Judicial Circuit of Florida,
in and for Leon County.*

<i>The State of Florida, Plaintiff,</i>	
<i>Vs.</i>	<i>Assumpsit Dam-</i>
<i>Southern Mutual Aid Association, a</i>	<i>ages, \$2,000.00.</i>
<i>Corporation, Defendant.</i>	

This is a case in which the Attorney General brought an action at law to compel the Southern Mutual Aid Association, an insurance company doing a sick and funeral benefit insurance business, to pay to the State the 2 per cent. tax upon its gross amount of receipts received from its policy-holders in this State, as provided by law. After issue was joined, the case was in February, 1910, tried in the Circuit Court of Leon County and judgment was rendered in behalf of the State. Thereupon the defendant took an appeal to the Supreme Court, where the cause is now pending.

*Circuit Court of the Second Judicial Circuit of Florida,
in and for Leon County.*

<i>The State of Florida, Plaintiff, Vs. Peninsular Industrial Insurance Com- pany, a Corporation, Defendant.</i>	<i>Assumpsit Dam- ages, \$3,000.00.</i>
---	--

This is a case in which the Attorney General brought an action at law to compel the Peninsular Industrial Insurance Company, an insurance company doing a sick and funeral benefit insurance business, to pay to the State the 2 per cent. tax upon its gross amount of receipts received from its policy-holders in this State, as provided by law. After issue was joined, the case was tried in the Circuit Court of Leon County and judgment was rendered in behalf of the State. Thereupon the defendant took an appeal to the Supreme Court, where the cause is now pending.

*Circuit Court of the Second Judicial Circuit of Florida,
in and for Leon County.*

*The State of Florida, Plaintiff,
Vs.
Afro-American Industrial and Benefit
Association, a Corporation, Defend-
ant.*

This is a case in which the Attorney General brought an action at law to compel the Afro-American Industrial and Benefit Association, an insurance company doing a sick and funeral benefit insurance business, to pay to the State the 2 per cent. tax upon its gross amount of receipts received from its policy-holders in this State, as provided by law. After issue was joined, the case was tried in the Circuit Court of Leon County and judgment was rendered in behalf of the State. Thereupon the defendant took an appeal to the Supreme Court, where the cause is now pending.

*Circuit Court of the Second Judicial Circuit of Florida,
in and for Calhoun County.*

Pennington & Evans, Complainant,

Vs.

*S. B. Atkins, as Clerk of the Circuit
Court of Calhoun County, and A. C.
Croom, as Comptroller of the State
of Florida, Defendants.*

*Bill to Cancel
Tax Certificates.*

This was a suit instituted by Pennington & Evans to have cancelled certain tax certificates as a cloud upon the title to lands. The bill alleged in substance that the land was assessed and that the turpentine rights thereon were separately assessed; that the taxes on the lands were paid, but as the taxes assessed against the turpentine lease privilege upon the lands were not paid the said turpentine lease privileges upon the land were sold to the State; that the papers or tax certificates issued for such sales "recites that the taxes due upon the lands therein mentioned have not been paid; that there is nothing on the face of said papers purporting to be tax certificates to show that they relate to taxes upon turpentine lease privileges except the words 'Tur Lease' at the top of said papers"; that said papers are the regular forms used when lands are sold for non-payment of the taxes due thereon; that under the law deeds may issue on the certificates and be a cloud on the title to the lands; that on application the Comptroller refused to cancel said certificates.

To this bill a demurrer was interposed and upon hearing the court overruled the demurrer and the defendants took an appeal to the Supreme Court. The ruling of the Circuit Court was sustained. Case reported in 59 Fla. Sup. Ct. Reports.

THE FOLLOWING CASES WERE PENDING IN THE
COURTS AT THE TIME OF MY ASSUMING
THE DUTIES OF ATTORNEY GENERAL.

*Circuit Court of the Third Judicial Circuit, in and for
Suwannee County.*

*Florida Railway Company, a Corpora-
tion, Complainant,
Vs.*

A. C. Croom, Comptroller, et al.

This was a suit instituted by the Florida Railway Company on the 13th of November, 1906, to enjoin the sale of its property by the defendants for taxes assessed against it for the year 1905. The Comptroller, with the assistance of the State Treasurer and Attorney General, assessed the said railroad and its property for taxes. The railroad company did not pay its taxes as assessed within the time provided by law for the payment of taxes. The Comptroller thereupon issued his warrant to the Sheriff of Suwannee County to levy upon and make sale of the Florida Railway and its property in accordance with law to satisfy the unpaid taxes for the year 1905. Thereupon, prior to the date fixed for sale by the Sheriff, the railroad company filed its bill for injunction to restrain the sale of its railroad and property. A temporary injunction was issued.

This case was settled on the 1st day of July, 1910, and the taxes paid upon a valuation agreeable to the assessing officers.

Four other similar suits were instituted to enjoin the collection of the taxes due by said railroad for 1906, 1907, 1908 and 1909. All of said suits were settled upon the same terms as the foregoing suit. The total amount of taxes collected in the settlement was about twenty thousand dollars.

*Circuit Court of the Second Judicial Circuit of Florida,
in and for Leon County.*

*Rachel C. M. Gaillard and Henry Gaillard, her husband, Complainants,
Vs.*

George Lewis, as Executor, et al., Defendants.

This suit was instituted by Rachel C. M. Gaillard and Henry Gaillard, her husband, claiming as heirs of J. D. Westcott, against George Lewis, as executor of the will of Judge J. W. Westcott, the State Board of Education and the State Board of Control, seeking to have declared, after the passage of Chapter 5384, Laws of Florida, Acts of 1905, commonly known as the "Buckman bill," terminated the trust estate created under Judge Westcott's will for the benefit of the West Florida Seminary and to have decreed that such estate reverted to the heirs of Judge Westcott.

The defendants interposed a demurrer to the bill of complaint. Upon hearing of the demurrer it was overruled, and the defendants took an appeal to the Supreme Court. The cause is now pending in said court.

SUITS AGAINST THE BOARD OF DRAINAGE
COMMISSIONERS.

*Southern States Land and Timber Company, Appellant,
Vs.*

*Board of Drainage Commissioners,
Appellees.*

*Florida Land and Timber Company,
Appellant,
Vs.*

*Board of Drainage Commissioners,
Appellees.*

*Consolidated Land Co., Appellant,
Vs.
Board of Drainage Commissioners,
Appellees.*

*Empire Land Co., Appellant,
Vs.
Board of Drainage Commissioners,
Appellees.*

*The Model Land Co., Appellant,
Vs.
Board of Drainage Commissioners,
Appellees.*

*The Florida East Coast Railway Com-
pany, Appellant,
Vs.
Board of Drainage Commissioners,
Appellees.*

All of the above suits were instituted for the purpose of having declared unconstitutional the drainage tax law of 1907. The constitutionality of the Act was sustained in the United States Circuit Court. The cases were then appealed to the United States Circuit Court of Appeals at New Orleans. The decision of the Circuit Court was here sustained. An appeal was then taken by the appellant companies to the United States Supreme Court. In January, 1910, an agreement was made with appellant companies whereby each of them agreed to have their cases, respectively, dismissed in the United States Supreme Court and to pay their taxes. In pursuance of this agreement these cases were dismissed in July, 1910. These cases were directly in charge of Hon. W. S. Jennings, who was employed by the Board of Drainage Commissioners in, 1908, to take charge of and

handle said litigation. The present Attorney General, after his induction into office in 1909, rendered such assistance in the litigation and the settlement thereof as was required of him.

SUITS AGAINST THE TRUSTEES OF THE INTERNAL IMPROVEMENT FUND.

*Circuit Court of the Second Judicial Circuit of Florida,
in and for Leon County.*

*Florida East Coast Railway Company,
Complainant,*

Vs.

*Trustees of the Internal Improvement
Fund, Defendants.*

This is a suit instituted by the complainant against the Trustees of the Internal Improvement Fund, seeking to compel the Trustees to convey to said complainant 2,040,000 acres of land, claiming the said land under a legislative land grant act. This suit is now pending, the issues not having yet been tried.

*Circuit Court of the Second Judicial Circuit of Florida,
in and for Leon County.*

*Tallahassee Southeastern Railroad Co.,
Complainant,*

Vs.

*Trustees of the Internal Improvement
Fund, Defendants.*

This is a suit instituted by the complainant against the Trustees of the Internal Improvement Fund, seeking to compel the Trustees to convey to said complainant 400,000

acres of land, claiming the said land under a legislative land grant act. This suit is now pending, the issues not having yet been tried.

In the Circuit Court of the United States for the Northern District of Florida.

Richard G. Peters, Complainant,

Vs.

Trustees of the Internal Improvement Fund, Defendants.

This is a suit instituted by the complainant against the Trustees of the Internal Improvement Fund, seeking to compel the Trustees to either convey to him 400,000 acres of land or the sales price of the land, amounting to \$251,000. A demurrer was interposed to complainant's bill, and was sustained. The complainant took an appeal to the Circuit Court of appeals at New Orleans. Upon the suggestion of Judge Bisbee, one of the attorneys for appellant, that he doubted the Court of Appeals having jurisdiction, the appeal was dismissed from this court for want of jurisdiction. Appeal was then taken to the Supreme Court of the United States by the said Richard G. Peters. The case is now pending in said court.

Circuit Court of the Seventh Judicial Circuit of Florida, in and for Dade County.

Charles H. Root, Complainant,

Vs.

James Gardner and the Trustees of the Internal Improvement Fund, Defendants.

This is a suit instituted by complainant to compel the Trustees of the Internal Improvement Fund to convey certain lands under a claim founded on the homestead

statutes of this State. The case is now pending upon bill and answer, testimony not yet having been taken.

In the Circuit Court of the United States for the Northern District of Florida.

W. B. Cutting and R. F. Cutting,
Complainants,
Vs.

Albert W. Gilchrist et al., as Trustees
of the Internal Improvement Fund
of the State of Florida, Defendants.

This is a suit instituted August 5th, 1910, by the complainants against the Trustees of the Internal Improvement Fund, in which they seek to recover from the Trustees the sum of \$79,000 in payment of alleged bonds issued by the Florida Railroad Company under the Internal Improvement Act of 1855. The suit is now pending, the issues not having yet been tried.

In the Circuit Court of the United States for the Northern District of Florida.

Sidney I. Wailes, Complainant,
Vs.

Trustees of the Internal Improvement
Fund, Defendants.

This is a suit instituted by the complainant against the Trustees of the Internal Improvement Fund, wherein he seeks to recover from the Trustees approximately \$80,000 alleged to be due him for services alleged to have been rendered by him in connection with the procurement of the patent from the Federal Government to the Everglades lands, under a contract alleged to have been made with him by the Trustees on April 13th, 1878. This suit is now pending, the issues not having yet been tried.

QUO WARRANTO, INJUNCTION, AND MANDAMUS.

Authority was given by the Attorney General to the parties whose names appear below to institute proceedings in the name of the Attorney General upon relation of the State in Quo Warranto and Injunction. Statement of the purpose of the suit is given in each case.

QUO WARRANTO.

A. E. Heyer, Miami, Florida.

July 8th, 1909.

To determine the legally elected Chairman of the Board of County Commissioners of Dade County, authority was granted the above party to institute proceedings against Thomas Brewer, the then Acting Chairman, to show by what authority he acted in such capacity.

Sparkman & Carter, Tampa, Florida.

July 9th, 1909.

To empower the County Commissioners to open up and remove fence obstructing two settlement roads of Hillsborough County, said roads connecting two public roads, one running from Tampa to Plant City and the other from Tampa to Bartow.

John P. Wall, Tampa, Florida.

July 6th, 1910.

In behalf of the Town of Palmetto, in the County of Manatee, authority was granted to use the name of the Attorney General upon the relation of the State to in-

quire by what warrant, Nina H. Graham and John A. Graham, acting in her right, under the name of the Manatee Electric Company, were assuming to maintain within the streets and highways of the Town of Palmetto, poles, wires and appliances for the purpose of furnishing electric power and lights to the Town of Palmetto and its inhabitants.

J. B. Johnson, Live Oak, Florida.

October 7th, 1910.

Authority granted to use the name of the Attorney General to test the legality of the incorporation of the Town of Branford, in Suwannee County.

T. F. West, Milton, Florida.

June 14th, 1909.

Authority granted to institute suit in name of the Attorney General to inquire into the authority by which L. M. Rhoda exercised the functions of the office of Mayor of the Town of Milton.

Alonzo B. McMullen,

April 7th, 1909.

Authority granted to institute suit in name of the Attorney General to inquire into the authority by which J. V. Harris exercised the functions of the office of a member of the Board of Public Instruction from District No. 1 of Monroe County.

*Wilson & Boswell and J. W. Brady, Bartow, Florida,
July 28th, 1909.*

Authority granted to institute suit in the name of the Attorney General to inquire into the authority by which the officers of the Municipality of Winter Haven, Fla., exercise the functions of the offices of said municipality.

INJUNCTION.

*Jones & Pasco, Pensacola, Florida,
October 6th, 1910.*

Authority granted to file petition for injunction on behalf of the Kupfrian Park Company against one Crane, to require the said Crane to remove an obstruction from a street of the Kupfrian Park tract addition to the City of Pensacola.

MANDAMUS.

*H. M. Hampton, Ocala, Florida,
June 14th, 1909.*

Authority granted to instiute mandamus proceedings in the name of Attorney General to compel the County Commissioners of Marion County to canvass the vote of an election held in one of the Road Districts of Marion County, according to law.

CRIMINAL CASES DISPOSED OF.

Moses Daniels, Luther Russ and Silas Daniels vs. The State of Florida, January Term, 1909; offense, murder in first degree; appeal from the Circuit Court for Walton County; disposition, judgment affirmed as to Moses Daniels, reversed as to Luther Russ and Silas Daniels. 57 Fla. 1.

Phillip Fudge vs. The State of Florida, January Term, 1909; offense, unlawfully carrying a concealed weapon; appealed from the Circuit Court for Jackson County; disposition, reversed. 57 Fla. 7.

Julius Hallback vs. The State of Florida, January Term, 1909; offense, dealer in liquors in violation of local option law; appealed from the Circuit Court for St. Lucie County; disposition, affirmed. 57 Fla. 15.

Adam Johnson vs. The State of Florida, January Term, 1909; offense, murder; appealed from the Circuit Court for Jackson County; disposition, reversed. 57 Fla. 18.

H. O. Mobley vs. The State of Florida, January Term, 1909; offense, larceny; appealed from the Criminal Court of Record of Hillsborough County; disposition, reversed. 57 Fla. 22.

O. D. Smith vs. The State of Florida, January Term, 1909; offense, murder, first degree; appealed from the Circuit Court for Duval County; disposition, affirmed. 57 Fla. 24.

W. E. Smith vs. The State of Florida, January Term, 1909; offense, carnal intercourse with unmarried female under the age of 18 years; appealed from the Criminal Court of Record for Duval County; disposition, affirmed. 57 Fla. 26.

Hester Stone vs. The State of Florida, January Term, 1909; offense, murder, first degree; appealed from the

Circuit Court for Walton County; disposition, affirmed. 57 Fla. 28.

Orum Ruston vs. The State of Florida, June Term, 1909; offense, assault with intent to rape; appeal from the Criminal Court of Record of Suwannee County; disposition, reversed. 58 Fla. 94.

Everett Bass vs. The State of Florida, June Term, 1909; offense, larceny of cattle; appealed from the Circuit Court for Polk County; disposition, affirmed. 58 Fla. 1.

Mamie Bunch vs. The State of Florida, June Term, 1909; offense, assault with intent to murder; appealed from the Criminal Court of Record of Suwannee County; disposition, affirmed. 58 Fla. 9.

William Camp vs. The State of Florida, June Term, 1909; offense, keeping and maintaining gaming tables and keeping a gaming room and permitting gambling in premises kept by him; appealed from the Criminal Court of Record of Escambia County; disposition, affirmed. 58 Fla. 12.

Lee Carraway vs. The State of Florida, June Term, 1909; offense, violation of conditions of pardon; appealed from the Circuit Court for Suwannee County; disposition, affirmed. 58 Fla. 15.

M. B. Charles vs. The State of Florida, June Term, 1909; offense, forgery; appealed from the Criminal Court of Record of Escambia County; disposition, affirmed. 58 Fla. 17.

Buck Clinton and Edward Clinton vs. The State of Florida, June Term, 1909; offense, arson; appealed from the Criminal Court of Record of Orange County; disposition, affirmed. 58 Fla. 23.

Andrew Copeland vs. The State of Florida, June Term, 1909; offense, murder, first degree; appealed from the

Circuit Court for Santa Rosa County; disposition, affirmed. 58 Fla. 26.

Hardy Cox vs. The State of Florida, June Term, 1909; offense, aggravated assault; appealed from the Circuit Court for Gadsden County; disposition, reversed. 58 Fla. 33.

Charles Enson vs. The State of Florida, June Term, 1909; offense, grand larceny; appealed from the Criminal Court of Record of Dade County; disposition, reversed. 58 Fla. 37.

John Gilbert vs. The State of Florida, June Term, 1909; offense, murder, first degree; appealed from the Circuit Court for Washington County; disposition, affirmed. 58 Fla. 50.

Frank Graham vs. The State of Florida, June Term, 1909; offense, dealing in liquors in violation of local option law; appealed from the Circuit Court for Citrus County; disposition, reversed. 58 Fla. 53.

Will Gray vs. The State of Florida; offense, assault with intent to murder; appeal from the Criminal Court of Record of Duval County; disposition, affirmed. 58 Fla. 54.

I. B. Hooks vs. The State of Florida, June Term, 1909; offense, disposing of mortgaged property without the consent of mortgagee; appealed from the Circuit Court for Jackson County; disposition, affirmed. 58 Fla. 57.

Dave Jenkins vs. The State of Florida, June Term, 1909; offense, breaking and entering; appealed from the Circuit Court for Taylor County; disposition, affirmed. 58 Fla. 62.

I. N. Johnson vs. The State of Florida, June Term, 1909; offense, resisting an officer; appealed from the Criminal Court of Record of Orange County; disposition, affirmed. 58 Fla. 68.

Walter Logan, Henry Brown, George Harris, Baby Toule and Martin Reggins vs. The State of Florida, June Term, 1909; offense, manslaughter; appealed from the Circuit Court for Duval County; disposition, affirmed. 58 Fla. 72.

Bill Mills vs. The State of Florida, June Term, 1909; offense, selling property subject to lien; appealed from the Circuit Court for Madison County; disposition, affirmed. 58 Fla. 74.

R. H. Owen vs. The State of Florida, June Term, 1909; offense, murder; appealed from the Circuit Court for Alachua County; disposition, affirmed. 58 Fla. 90.

J. Martin Posey vs. The State of Florida, June Term, 1909; offense, assault with intent to murder; appealed from the Circuit Court for Pasco County; disposition, affirmed. 58 Fla. 94.

Frank Stewart and William Stewart vs. The State of Florida, June Term, 1909; offense, murder; appealed from the Circuit Court for LaFayette County; disposition, reversed. 58 Fla. 97.

David Thompson vs. The State of Florida, June Term, 1909; offense, breaking and entering with intent to steal; appealed from the Criminal Court of Record of Dade County; disposition, affirmed. 58 Fla. 108.

William Telfair vs. The State of Florida, June Term, 1909; offense, uttering a forged instrument; appealed from the Circuit Court for Jackson County; disposition, affirmed. 58 Fla. 110.

G. H. Tillman vs. The State of Florida, June Term, 1909; offense, bribery; appealed from the Criminal Court of Record of Suwannee County; disposition, affirmed. 58 Fla. 113.

Henry Thomas, alias Kid Henry, vs. The State of Florida, June Term, 1909; offense, shooting into a railroad.

car; appealed from the Criminal Court of Record of Walton County; disposition, reversed. 58 Fla. 120.

Duke Thomas, alias Duke Thompson, vs. The State of Florida, June Term, 1909; offense, murder, first degree; appealed from the Circuit Court for Jackson County; disposition, affirmed. 58 Fla. 122.

Savannah Waldo vs. The State of Florida, June Term, 1909; offense, grand larceny; appealed from the Criminal Court of Record of Hillsborough County; disposition, affirmed. 58 Fla. 133.

D. C. Weaver vs. The State of Florida, June Term, 1909; offense, assault with intent to murder in second degree; appealed from the Criminal Court of Record of Duval County; disposition, affirmed. 58 Fla. 135.

Turner Williams, Maurice Williams and Jacob Hargrove vs. The State of Florida, June Term, 1909; offense, murder, first degree; appealed from the Circuit Court for Walton County; disposition, reversed. 58 Fla. 138.

C. F. Adkinson vs. The State of Florida, January Term, 1910; offense perjury; appealed from the Criminal Court of Record of Walton County; disposition, reversed. 59 Fla. 1.

W. T. Bedsole vs. The State of Florida, January Term, 1910; offense, cruelty to animals; appealed from the Criminal Court of Record of Walton County; disposition, reversed. 59 Fla. 3.

William A. Bexley and Truby Osteen vs. The State of Florida, January Term, 1910; offense, manslaughter; appealed from the Circuit Court for Alachua County; disposition, affirmed. 59 Fla. 6.

James Clark vs. The State of Florida, January Term, 1910; offense, larceny; appealed from the Circuit Court for Columbia County; disposition, affirmed. 59 Fla. 9.

James Clark vs. The State of Florida, January Term, 1910; on rehearing. Motion denied. 59 Fla. 15.

Esom Flowers and Albert Flowers vs. The State of Florida, January Term, 1910; offense, larceny; appealed from the Criminal Court of Record of Walton County; disposition, affirmed. 59 Fla. 16.

H. F. Hinson vs. The State of Florida, January Term, 1910; offense, grand larceny; appealed from the Criminal Court of Record of Duval County; disposition, reversed. 59 Fla. 20.

William Moore vs. The State of Florida, January Term, 1910; offense, murder; appealed from the Circuit Court for Dade County; disposition, affirmed. 59 Fla. 23.

Alex Sapp vs. The State of Florida, January Term, 1910; offense, selling intoxicating liquors in dry county; appealed from the Circuit Court for Columbia County; disposition, affirmed. 59 Fla. 35.

Edward Sims vs. The State of Florida, January Term, 1910; offense, murder first degree; appealed from the Circuit Court for Polk County; disposition, affirmed. 59 Fla. 38.

Isiah H. Speers vs. The State of Florida, January Term, 1910; offense, receiving stolen goods; appealed from the Criminal Court of Record of Escambia County; disposition, reversed. 59 Fla. 44.

J. V. White vs. The State of Florida, January Term, 1910; offense, murder second degree; appealed from the Circuit Court for Jackson County; disposition, reversed. 59 Fla. 53.

J. W. Menefee vs. The State of Florida, January Term, 1910; offense, embezzlement; appealed from the Circuit Court for Lake County; disposition, affirmed. 59 Fla. 316.

J. L. Goff vs. The State of Florida, June Term, 1910; offense, arson; appealed from the Criminal Court of Record of Suwannee County; disposition, affirmed.

William Knight vs. The State of Florida, June Term, 1910; offense, arson; appealed from the Circuit Court for Clay County; disposition, affirmed.

Jim Green alias Jim McQueen vs. The State of Florida, June term, 1910; offense, murder first degree; appealed from the Circuit Court for Duval County; disposition, affirmed.

James B. Adams vs. The State of Florida, June Term, 1910; offense, receiving stolen property knowing same to be stolen; appealed from the Criminal Court of Record of Escambia County; disposition, reversed.

John V. Ryan vs. The State of Florida, June Term, 1910; offense, issuing draft without funds deposited to pay same; appealed from the Criminal Court of Record of Orange County; disposition, affirmed.

H. A. Blocker vs. The State of Florida, June Term, 1910; offense, grand larceny; appealed from the Criminal Court of Record of Volusia County; disposition, reversed.

CRIMINAL CASES DISMISSED ON MOTION OF THE
ATTORNEY GENERAL.

Charles P. Munn vs. The State of Florida; writ of error to the Circuit Court for Columbia County; dismissed January 19, 1909.

George Stokes vs. The State of Florida; writ of error to the Circuit Court for Escambia County; dismissed January 26, 1909.

George W. Thomas vs. The State of Florida; writ of error to the Criminal Court of Record of Walton County; dismissed June Term, 1909.

Ben Johnson vs. The State of Florida; writ of error to the Criminal Court of Record of Escambia County; dismissed June 8, 1909.

Thomas Crews vs. The State of Florida; writ of error to the Circuit Court for Baker County; dismissed January Term, 1910.

M. B. Charles vs. The State of Florida; writ of error to the Criminal Court of Record of Escambia County; dismissed (by plaintiff in error) January 20, 1910.

John Merrill vs. The State of Florida; writ of error to the Criminal Court of Record of Dade County; dismissed June 24, 1910.

Joe Clark vs. The State of Florida; writ of error to the Criminal Court of Record of Dade County; dismissed June 24, 1910.

D. M. Davidson vs. The State of Florida; writ of error to the Circuit Court for Putnam County; dismissed November 29, 1910.

HABEAS CORPUS CASES.

Oscar Lee vs. James C. Van Pelt, Sheriff; January Term, 1909; writ of error to the Circuit Court for Escambia County; disposition, affirmed. 57 Fla. 94.

Noah Harper vs. John P. Galloway, Sheriff; June Term, 1909; writ of error to the Circuit Court for Marion County; disposition, reversed. 58 Fla. 255.

Ex Parte Margaret Beville, June Term, 1909; this was a case of original jurisdiction; disposition, affirmed. 58 Fla. 170.

J. S. Snowden vs. Joe Brown, Sheriff; June Term, 1910; writ of error to the Circuit Court for Brevard County; disposition, reversed.

CRIMINAL CASES PENDING.

W. D. Johnson vs. The State of Florida.

G. D. Presley vs. The State of Florida.

Dave McLendon vs. The State of Florida.

J. B. Sallas vs. The State of Florida.

Will Walker, alias Sonny Walker, vs. The State of Florida.

Trixie Russell vs. The State of Florida.

Robert Pollard vs. The State of Florida.

Geore Gee vs. The State of Florida.

Dennard Webb vs. The State of Florida.

Manuel Stematiadis vs. The State of Florida.

Joseph Bell vs. The State of Florida.

Curley Purcell vs. The State of Florida.

HABEAS CORPUS PENDING.

Ex parte J. L. Goff.

OFFICIAL OPINIONS—ATTORNEY GENERAL.

APPOINTIVE OFFICES.

Tallahassee, January 16, 1910.

Hon. Albert W. Gilchrist,
Governor, State of Florida,
Tallahassee, Florida.

Dear Sir :—

Replying to your oral request of this date, asking for an opinion as to your authority to revoke appointments of the officers of the Criminal Court of Record for Dade County, who are holding said offices by virtue of commissions issued by Governor Broward the latter part of 1907, or to remove said officers and thereby create vacancies therein which may be filled by you, I beg to say that I understand the facts to be as follows: The session of the Legislature of 1907 established a Criminal Court of Record in and for Dade County, Florida; that after some formality as to the question of the nomination of candidates for the offices of said court had transpired, and a consideration of the nominations by ex-Governor Broward (the then Governor), he issued commissions in the latter part of 1907 to the present incumbents, which commissions were issued in conformity to the provisions of Section 301 of the General Statutes of 1906, which reads as follows:

“301 (217). Filling Vacancies.—In all such cases, and in all other cases in which a vacancy may occur, if the office be a State, district or county office (other than a member or officer of the Legislature), it shall be the duty of the Governor to fill such office by appointment, and the person so appointed shall be entitled to take and hold such office until the same shall be filled by an election as provided by law, and in cases requiring the confirmation

or the advice and consent of the Senate, the person so appointed may hold until the end of the next ensuing session of the Senate unless an appointment be sooner made and confirmed and consented to by the Senate."

My opinion is that these appointments are in full force until the end of the next session of the Senate, unless another appointment be sooner made and confirmed and consented to by the Senate. In support of this opinion, I beg to call your attention to The Advisory Opinion to the Governor, rendered by the Supreme Court in the 14th Florida, page 278, wherein the court advise that the Governor had no authority to make the appointment either for a longer or a shorter time than that provided by the Constitution or Acts of the Legislature in conformity therewith. Also, see Advisory Opinion to the Governor in the 45th Florida, page 154, in which the court advises the Governor that where there occurs a vacancy in the office of the Judge of the Criminal Court of Record, during a recess of the Senate, that the Governor properly fills such vacancy by appointment to hold not longer than the end of the next ensuing session of the Senate, or until an appointment is made and confirmed by the Senate. In this opinion the Supreme Court makes reference to the opinion above referred to in the 14th Florida, page 278, and re-asserts, as I understand, the principles laid down in that opinion.

There is no vacancy in the office of the Solicitor of said court, nor in the office of Judge thereof. The only possible way that a vacancy could be created would be by the removal of said officers.

The outstanding commissions could not be revoked, as it is my opinion that where an appointment is once made in conformity to the Constitution and the statutes thereunder, the appointment is not revocable, except in instances where the Executive, through mistake, erroneously issues the commission to the wrong person, or, in instances where the appointive power has the absolute right

of removal. Neither of these contingencies exist in the present case, as it is not claimed that the appointments were made by mistake and the commissions erroneously issued to the wrong person. Nor does the law of our State give the Executive the absolute right of removal in such cases. See Mechem on Public Officers, p. 46, Secs. 113 and 120; also, Section 15, Article IV, of the Constitution of Florida, which provides as follows:

"Art. IV., Sec. 15.—All officers that shall have been appointed or elected, and that are not liable to impeachment, may be suspended from office by the Governor for malfeasance, or misfeasance, or neglect of duty in office, for the commission of any felony, or for drunkenness or incompetency, and the cause of suspension shall be communicated to the officer suspended and to the Senate, at its next session. And the Governor, by and with the consent of the Senate, may remove any officer, not liable to impeachment, for any cause above named. * * *"

I beg to advise you that the summary of my opinion as based on the facts and the law relative to this matter is as follows:

First—That the present incumbents are the legal officers of said court until the end of the session of the next ensuing session of the Senate, unless an appointment be sooner made and confirmed and consented to by the Senate.

Second—That the only procedure under which you would have the authority to make new appointments to said offices would be to first remove the present incumbents upon proper cause, as required by the provisions of Section 15, Article IV, of the Constitution of Florida.

Third—That there are no vacancies in said offices at present; therefore, the provisions of Section 301 of the General Statutes, providing for the filling of vacancies, cannot be invoked.

As to the equities and moral rights existing between the

present incumbents and the nominees for these offices, based upon primary nominations, agreements, etc., they have no bearing as to the law in the case, and, therefore, have not been taken into consideration in the rendition of this opinion.

Respectfully submitted,

PARK TRAMMELL,
Attorney General.

SALE OF LIQUOR BY CLUBS.

Tallahassee, Fla., January 18, 1909.

*Hon. A. C. Croom,
State Comptroller,
Tallahassee, Florida.*

Dear Sir:—

Replying to your written request under date of the 16th instant, as to whether or not clubs selling liquors to its members and to non-resident guests would be required to procure a permit from the County Commissioners before getting the license as provided for clubs selling liquors—

I beg to advise that Section 1222 of the General Statutes provides as follows: "Any person, firm or corporation wishing to sell liquors, wines or beer in any election district wherein a majority of the registered voters have, since October 1st, 1907, petitioned for a permit to sell liquors, wines or beer, shall make application to the Board of County Commissioners of the county at a regular meeting asking the Board to grant to the applicant the right to sell liquors, wines and beer in such election district and praying for a permit to make such sales." In my opinion the sale of liquor to members of a club and to non-resident guests would be a sale of liquors, and the club applying for a license to sell liquors, wines and beer in the district where the club was located, would, there-

fore, be subject to the provisions of said Section 1222, which requires that a permit be procured.

There is nothing in the statute providing for special license for the sale of liquors by a club, to its members and non-resident guests that relieves them from the provisions of the section requiring the permit. It is the sale of the liquor without the permit that the law seeks to prohibit, and I believe it would apply to sales by clubs as well as by others. The penalty for selling liquor without the permit is found in Section 3550 of the General Statutes and reads as follows:

"Whoever sells intoxicating liquors, wines or beers without a permit from the Board of County Commissioners of the county, according to law, shall be punished as if he had sold liquor without a license."

Respectfully submitted,
 PARK TRAMMELL,
 Attorney General.

RETURN OF OFFICIAL BOND.

Tallahassee, January 23, 1909.

Hon. Albert W. Gilchrist,
Governor, State of Florida,
Tallahassee, Fla.

Dear Sir:—

Replying to your written request of this date, wherein you state that "On November 27, 1908, Henry W. Thompson, Clerk of Santa Rosa County, executed an official bond in the sum of five thousand dollars with the American Surety Company of New York, as surety. Said bond was regularly approved by the County Commissioners of Santa Rosa County, and by the Comptroller of the State, though the dates of such approval do not appear upon the bond. It appears that Mr. Thompson was advised that the State could not accept the above mentioned bond, and

on December 7, 1908, he executed another bond with personal sureties, which also bears the approval of the County Commissioners of Santa Rosa County and the approval of the Comptroller, the latter being dated December 18, 1908. Both bonds, approved as above mentioned, are now held by the Secretary of State," and ask my advice as to whether it will be proper and lawful for the Secretary of State to surrender to Mr. Thompson the said bond executed by personal sureties, I beg to advise that I find no authority for the Secretary of State returning a bond that has been once filed with him. However, if there could not be any possible legal complications arising on account of the Secretary returning the paper once filed, and the State's interest would not be endangered by such return, it might be permissible in instances of an unquestionable mistake in the filing of the paper.

In the present case, however, if the personal surety bond should be returned and there should arise a necessity for enforcing the surety company's bond, this company would at least have a fighting contention that the other bond was given subsequently to its bond, and that the acceptance and approval of the last bond (the bond given by personal sureties) released the former bond.

Yours very truly,

PARK TRAMMELL,

Attorney General.

AUTHORITY OVER COUNTY BOND ELECTIONS.

Tallahassee, January 25, 1909.

Hon. H. Clay Crawford,
Secretary of State,
Tallahassee, Florida.

Dear Sir :—

Referring to the letter received by you from William H. Fleming, of Clay County, and handed to me for consider-

ation, I beg to advise that according to Sections 786 to 801, inclusive, of the General Statutes, the matter of calling elections for bonding a county for road purposes and the issuance of bonds for said purposes is solely within the jurisdiction and power of the Board of County Commissioners. The Governor, nor his Cabinet, have any duties or authority in connection therewith; therefore, he has no right to interfere with the election ordered in said county by the County Commissioners.

Yours very truly,

PARK TRAMMELL,
Attorney General.

AUTHORITY OF STATE BOARD OF EDUCATION
AND BOARD OF CONTROL.

Tallahassee, January 27, 1909.

Hon. W. M. Holloway,
State Supt. Public Instruction,
Tallahassee, Florida.

Dear Sir:—

I am in receipt of your letter of the 20th instant, wherein you request my opinion on Section 15 and the latter part of Section 19, Chapter 5384, Acts of 1905, "with reference to whether the State Board of Control has the right to select faculties for the University of the State of Florida, the Florida Female College, the Institute for the Blind, Deaf and Dumb, and the Colored Normal School, without referring such action to the State Board of Education for its ratification."

In construing the sections of the law above referred to, it is necessary to review the entire chapter in order to ascertain if there are any other parts thereof that conflict with the two sections to which the inquiry is directed. I have investigated the entire Act of which these two sec-

tions are a part, and while I find that the Board of Control is vested with the authority and duty to elect a faculty, etc., for the Colored Normal School, as provided in Section 11 of said Act, and are by the provisions of Section 19 of said Act invested with full power and authority to appoint all the managers, faculty, teachers, etc., for the other institutions under its management and control, I do not find in said chapter any provision that conflicts with the provisions of Section 15 and the latter part of Section 19; therefore, it is my opinion that the actions of the Board of Control are at all times under and subject to the control and supervision of the State Board of Education.

The law, as found in Section 19 of said Act, specifically invests the Board of Control with power and authority to appoint all the managers, faculty, teachers, etc., and under this provision of the Act they have the right to appoint them; but, it is my opinion that under the provisions of Section 15 and the latter part of Section 19, the State Board of Education, exercising the power therein delegated, may require that the action of the Board of Control in appointing managers, faculty, etc., be submitted to the Board of Education for its approval.

If the above construction is not true, then the provisions of Section 15 and the latter part of Section 19 would carry absolutely no authority, and, therefore, be a mere nullity in said act.

The right of supervision and control of the State Board of Education, granted in said Act, could in my opinion be exercised by authorizing the Board of Control to exercise the power of selecting the faculty without the approval of the selection by the State Board of Education, or by the requirement that said appointment of a faculty should be submitted to the State Board of Education for approval.

Yours very truly,

PARK TRAMMELL,

Attorney General.

ALIEN RESIDENT NOT SUBJECT TO NON-RESIDENT LICENSE.

Tallahassee, January 28, 1909.

*Hon. A. C. Croom,
Comptroller,
Tallahassee, Florida.*

Dear Sir:—

Replying to your inquiry as to whether an alien, one who is a foreigner, not naturalized, but who has made Florida his residence and bona fide home for one year or more, will have to pay the fish license required of non-residents, I beg to advise that the term "resident" is defined in Burrill's Law Dictionary to be "one who has a seat or settlement in a place; one who dwells, abides or lives in a place; an inhabitant; one who resides or dwells in a place for some time." This definition is similar to that given by other law authorities. The fact that a person is not a naturalized citizen has no bearing upon the question of whether he is a resident or non-resident. It is, therefore, my opinion that an un-naturalized citizen can be a resident if his bona fide residence meets the requirement of the above definition of a resident.

Yours very truly,

PARK TRAMMELL,
Attorney General.

PENSIONER'S PROOF—HOME GUARDS.

Tallahassee, February 2, 1909.

*Hon. Albert W. Gilchrist,
Governor, State of Florida,
Tallahassee, Florida.*

Dear Sir:—

I am in receipt of your communication of the 29th instant, in which you ask to be advised as to whether "ap-

plicants for pension basing their applications upon having been members of organizations of Home Guards, organized for local defense, of which there is no record, either of such individual applicants or of such Home Guard organizations ever having been enlisted or mustered into the service of this State or the Confederate States, or no record of military or naval service rendered, are entitled to pensions" under Chapter 5600, Acts of 1907.

It is my opinion that the question as to whether there is any record of the applicant having been a member of an organization of Home Guards, which was enlisted or mustered into the service of the State or Confederate States, is not the only source of proof to indicate his service upon which he may base his application for a pension, as a member of the Home Guards, but this fact may appear as well from affidavits and proof of his service made by comrades or others, as indicated in the law, as to service.

From the language of Section 2, of Chapter 5600, Acts 1907, which provides that "Any person who enlisted and served in the military or naval service of the Confederate States, or of this State, *including home guards and reserves, * * **" shall receive a specified amount, etc., I am of the opinion that the language of this section refers to the person having enlisted in any of the above organizations and does not refer to the organization having been enlisted or mustered into the regular service of the State or Confederate States.

In view of this construction, the requirements as to the enlistment of the organization would, in my opinion, be within the discretion of the State Board of Pensions, it being within the province of this Board to require sufficient proof that the organization of Home Guards or reserves was a bona fide organization.

Very truly,

PARK TRAMMELL,
Attorney General.

LICENSE TAX, SICK AND FUNERAL BENEFIT
INSURANCE COMPANIES.

Tallahassee, February 2, 1909.

*Hon. W. V. Knott,
State Treasurer,
Tallahassee, Florida.*

Dear Sir:—

In reply to your letter of January 21st, in which you state that the insurance tax required of sick and funeral benefit companies by Section 8, of Chapter 5597, Acts of 1907, is due now for another year and remains unpaid, and ask that I give my opinion as to whether said failure of said companies is an impediment against the issuance of a certificate authorizing them to do business in Florida for the present year, I beg to say that I have investigated the point raised by your inquiry and find that the law authorizing the issuance of the certificates is independent of the license tax law.

The requirements necessary to procure a certificate are fully set out in the law, but I nowhere find in said law that the payment of the license tax is a prerequisite to the granting of the certificate of authority to do business. Therefore, it is my opinion that when the requirements as to obtaining the certificate have been fully met the certificate should be issued in conformity to the law requiring the issuance.

The enforcement of the license law will have to be pursued according to the provisions thereof.

I would suggest that the certificate authorizing a company to do business should clearly indicate that it was granted upon the compliance with the law, as a prerequisite to procuring said certificate, and its terms be not so general as to carry the idea that all laws had been complied with.

Yours very truly,

PARK TRAMMELL,
Attorney General.

PERSONS TENDERING TAX MONEY ENTITLED TO
DISCOUNT.

Tallahassee, February 26, 1909.

Hon. A. C. Croom,
Comptroller,
Tallahassee, Florida.

Dear Sir:—

I am in receipt of your communication of the 25th instant upon the subject of "Discount on Taxes," with which is enclosed a letter from Mr. Sam'l A. Swann, of Fernandina, Fla., dated February 17th, 1909, also a copy of a letter from Mr. Swann to J. D. Ogilvie, Tax Collector, and asking for my opinion as to whether a person who tendered payment for taxes between the 1st day of November and the 1st day of December is entitled to the discount allowed by Section 41, of Chapter 5596, Laws of 1907, where the assessment roll has not come into the hands of the Tax Collector during the time allowed for discount.

It is my opinion that if a bona fide tender was made by Mr. Swann to pay his taxes, and the same was refused without any fault on his part, but on account of the tax books not being completed as the law requires, the State is only entitled to the amount that would have been due at the time of the tender by Mr. Swann and the State cannot demand more on account of the failure of the State's officers to get the tax roll ready in accordance with the law.

This discount would, of course, only apply to specific property or holdings upon which Mr. Swann tendered payment.

Very respectfully,

PARK TRAMMELL,

Attorney General.

ITINERANT VENDORS.

Tallahassee, Fla., March 3rd, 1909.

*Hon. A. C. Croom,
Comptroller, State of Florida,
Tallahassee, Florida.*

Dear Sir:—

I am in receipt of your communication of the 3rd instant, enclosing a letter from W. A. Demilly, Tax Collector for Leon County, together with a letter from Dr. W. J. Livingston to him, a recommendation of W. J. Livingston, from the Marianna Drug Company, of Marianna, Fla., and a letter of introduction from the Mayor of Quincy, Fla., to the Mayor of Tallahassee, Fla., and requesting my opinion as to whether Dr. Livingston should be granted a merchant's license upon the showing made in said communication from him to Mr. Demilly, Tax Collector.

Section 503, of the General Statutes, provides for the issuance by the Tax Collector of licenses; it would be the duty of the Tax Collector to issue such license, provided, of course, it was for the purpose of conducting a legal business.

When any license is issued, if it comes to the knowledge of the Tax Collector, or other officer whose duty it is to see that the tax laws are enforced, that the license under which a person is doing a particular business, is not a license that would warrant the carrying on of such business, then such officer should see that the proper license is taken out, or proper steps taken to punish the person for conducting his business without a proper license for such business.

I am not familiar with the full details of the business conducted by Dr. Livingston and, therefore, am unable to say definitely whether he should have a merchant's license as an itinerant vendor of drugs.

The law provides for a merchant's license, but it also provides a license for "itinerant vendors" of drugs, p. 45, Laws of 1907. An itinerant vendor is either a principal or agent who engages in a temporary or transient business in the State, either in one locality or in traveling from place to place selling goods, wares and merchandise, and who, for the purpose of carrying on such business, hires, leases or occupies any building or structure for the exhibition and sale of such goods, wares and merchandise.

From the limited facts before me, it is my opinion that Dr. Livingston is an itinerant vendor of drugs.

Yours very truly,

PARK TRAMMELL,
Attorney General.

INHERITANCE TAX CONSTITUTIONAL.

Tallahassee, March 9, 1909.

*Hon. Albert W. Gilchrist,
Governor of Florida,
Tallahassee, Florida.*

Dear Sir:—

Replying to your letter of March 7th, wherein you ask if it would be constitutional for the Legislature to pass an act taxing inheritance, I beg to advise that in my opinion an inheritance tax would be constitutional under the Florida Constitution.

Yours very truly,

PARK TRAMMELL,
Attorney General.

TRANSFER OF FINE AND FORFEITURE FUND TO
SCHOOL FUND.

Tallahassee, Fla., March 13th, 1909.

Hon. W. M. Holloway,
Superintendent Public Instruction,
Tallahassee, Florida.

Dear Sir:—

Answering your inquiry of the 12th instant, with enclosure from Superintendent of Schools of Hamilton County, wherein you ask my opinion as to whether the County Commissioners have authority to transfer the surplus in the Fine and Forfeiture Fund to the School Fund, I beg to advise that Chapter 5699, of the Acts of 1907, provides "That if at the close of any year there is a surplus in the Fine and Forfeiture Fund over and above the claim or probable claims against the same and not needed for the purpose thereof," the County Commissioners "shall have authority to cause to be transferred by the County Treasurer from the Fine and Forfeiture Fund such portion of the Fund as has been derived from the hire of State and county convicts to the Road Fund," etc., "or the County School Fund."

If the facts as required by this law exist in Hamilton County, it is my opinion that the surplus fund can be, under the provisions of said Act, covered into the School Fund.

Yours very truly,

PARK TRAMMELL,
Attorney General.

REWARD—WHEN EARNED.

Tallahassee, June 29, 1909.

*Hon. Albert W. Gilchrist, Governor,
Tallahassee, Florida.*

Dear Sir:—

In the matter of the reward offered by the State for the arrest and conviction of the murderer of W. C. Sellars, I beg to advise that the reward was for the "arrest and conviction" of the guilty party. It is my opinion that a reward so worded is earned when there has been a conviction in the trial court.

Yours very truly,

PARK TRAMMELL,
Attorney General.

METHOD OF APPRAISING ANIMALS ORDERED
KILLED BY STATE BOARD OF HEALTH.

Tallahassee, Fla., July 12, 1909.

*Hon. A. C. Croom, Comptroller,
Tallahassee, Florida.*

Dear Sir:—

Replying to your letter of this date, wherein you ask my construction of Section 9, of Chapter 5933, of the Acts of 1909, the same being relative to the State paying for animals killed by the direction of the State Board of Health, on account of contagious and infectious diseases, beg to advise that the Act is really indefinite and uncertain in its terms and there is, therefore, a question as to the legislative intent upon the matter of the time at which the appraisement value should be fixed.

It was the evident intent of the Legislature that the animals should be paid for by the State; it would not, there-

fore, do to hold that the valuation should be at the time of the appraisement (which would be to value the dead animal), for this would be a construction of the law that would defeat its object. To hold that the basis of appraisement value should be the value of the animal at the time it was killed would, especially in incurable cases, practically defeat the object of the law. It is, therefore, my opinion that it was the legislative intent that the appraisers, in appraising the animal, should take into consideration the value of the animal at the time it was stricken with the disease. Any other construction would practically make the law a nullity.

Yours very truly,

PARK TRAMMELL,

Attorney General.

ORDER OF SERVICE OF SENTENCES.

Tallahassee, July 30, 1909.

Hon. B. E. McLin,

Commissioner of Agriculture,

Tallahassee, Florida.

Dear Sir:—

I am in receipt of your letter of the 28th instant, with letter from Mr. S. A. Rawls to you under date of July 26th, 1909, enclosed therewith, both of which relate to a convict which had escaped, committed a crime during the time of his escape and was convicted and given a sentence for such crime.

You desire to be advised, first, as to which sentence the prisoner is now serving; second, as to the payment of the reward, if any should be paid.

I beg to advise that in my opinion Charles Andrews, a convict, who escaped during the period of his sentence, and who was arrested and convicted for a crime during

LIBRARY

FLORIDA STATE COLLEGE FOR WOMEN

TALLAHASSEE, FLA.

the time of his escape and sentenced to a term of years in the State prison under the name of Will Thomas, should first serve out the term of his sentence from which he escaped, and then the succeeding term of imprisonment should be served. See 49 Mo. State vs. Connell, text 288.

As to your second inquiry, I beg to advise that unless the Sheriff has complied with the conditions of the reward he is not entitled thereto; this it seems that he cannot do on account of the prisoner being in the custody of the law.

If the prisoner was placed back in the custody of the law by the Sheriff of Osceola County, and the Sheriff who identified him as an escape was not instrumental in apprehending the prisoner, and has not now met the requirements of the reward, it is my opinion that he cannot collect the same.

Yours very truly,

PARK TRAMMELL,

Attorney General.

PURE FOOD LAW—BRANDING OF LIQUORS.

Tallahassee, August 9, 1909.

Hon. B. E. McLin,

*Commissioner of Agriculture,
Tallahassee, Florida.*

Dear Sir:—

I am in receipt of your letter of the 7th instant, in which you state that you are advised by Hon. A. P. Jordan, State Food and Drug Inspector, that quite a number of dealers in whiskey, wine, beer, etc., in Pensacola, are selling and offering for sale on that market the class of goods above enumerated, without having the percent. of alcohol printed on the label of their goods, and requesting me to advise you as to the proper method of procedure to force these parties to comply with the food regulations as they may relate to dealers in whiskey, etc.

Section 3, of Chapter 5935, Laws of 1909, states what the term food includes in the following language: "The term 'food,' as used herein, shall include all articles used for food, drink, confectionery or condiment by man or other animal, whether simple mixed or compound."

Section 5, of the same chapter, "in case of food," it is provided that an article shall be deemed to be misbranded "if it fail to bear a statement on the label in conspicuous letters of the quantity or proportion of any alcohol," etc., "or any derivative or preparation of such substances contained therein."

The class of articles enumerated in your letter would, in my opinion, come under the head of articles of food, according to the definition of what the term "food" includes. This being true, if any of the articles enumerated contain any alcohol, and the percentage of such alcohol is not stated or printed on the label, then the articles, if sold or offered for sale, would be sold or offered for sale in violation of the provisions of the Food and Drug Law.

Section 10, of the same chapter, provides for the taking of samples, and the manner in which they shall be taken.

Section 2, of the same chapter, provides for the examination of such samples as shall be taken under the provisions of Section 10, and also provides the method of procedure in case any sample or specimen so taken shall be adulterated or misbranded within the meaning of the law.

After a sample has been taken, examined or analyzed, and if found to be adulterated or misbranded, then it becomes the duty of the Commissioner of Agriculture to cause the goods so adulterated or misbranded, as the case may be, to be seized by the Sheriff of the county in which the goods are located, and further to notify the party from whom the goods or sample was obtained the result of the examination or analysis, and fixing a date for a hearing from said party before the Commissioner of Agriculture and Attorney General, if after such hearing the Commissioner of Agriculture and Attorney General find

that it appears that the provisions of the law have been violated, then it becomes the further duty of the Commissioner of Agriculture to at once certify the facts to the proper prosecuting attorney, including a copy of the result of the examination or analysis of such article, duly authenticated by the analyst or officer making such examination, under the oath of such officer. After this having been done, then it becomes the duty of such prosecuting officer to prosecute such offender.

Yours very truly,

PARK TRAMMELL,

Attorney General.

SURETY COMPANIES AUTHORIZED TO BOND
OFFICERS.

Tallahassee, Fla., October 23, 1909.

Hon. W. V. Knott,
State Treasurer,
Tallahassee, Florida.

Dear Sir:—

Replying to your letter of the 9th instant, wherein you wish to know whether a surety company which has not deposited fifty thousand dollars in bonds, as required by Section 2792, of the General Statutes, can insure city, county and State officers; also, wherein you wish advice in regard to complaint made by Marion M. Jackson, of Atlanta, I beg to advise that in my opinion it was the Legislature's intention that no surety company should bond city, county and State officers without first depositing the fifty thousand dollars in bonds; therefore, a general license does not cover this class of business. While this was the evident intent of the law, I find no authority for revoking the general license or authority when a company insures or bonds an officer without having met said requirements. Nor do I find any other method of punish-

ing a violation of said law. I would suggest, however, that the Board of Insurance Commissioners, or State Treasurer, issue a letter to all surety companies, putting them on notice that the law does not authorize them to insure officers unless they have met the requirements of Section 2792, and that in the event they should do so steps will be taken to enforce against them the law.

Yours very truly,

PARK TRAMMELL,

Attorney General.

BANKS—STOCK REQUIRED.

Tallahassee, February 26th, 1910.

*Hon. A. C. Croom,
Comptroller,
Tallahassee, Florida.*

Dear Sir:—

Replying to your communication of the 22nd instant, wherein you ask me to give my opinion upon the following questions:

(1) Can a banking company organized under the laws of this State open and maintain branch banks at will, when no such branches are specifically mentioned by location in the charter of such company?

(2) In the event a branch bank is established under specific authority contained in the banking company's charter, but without a special sum having been provided for in the charter for such branch bank, and the amount withdrawn from such branch bank reduces or impairs the amount of the capital stock of a banking company, will it be the duty of such company to make good the impairment?

(3) Can a bank be operated under a charter from the State, although under the name of a branch bank, with a

capital stock of less than fifteen thousand dollars, the minimum provided by law?

I beg to advise that the law is not so clear and definite touching upon these questions, but taking the law in its entirety, and arriving at the legislative intent therefrom, I am of the opinion that it was the intent, as conveyed by Section 2697 of the General Statutes, that the capital stock of each bank should be at least \$50,000; provided, that in towns of less than 3,000 inhabitants the Comptroller may authorize a capital stock of \$15,000, and in towns of not more than 6,000 inhabitants the Comptroller may authorize a bank with \$25,000 capital, and that any bank operating in this State should have those amounts of capital stock for each town or city in which it operates. I do not believe that the law contemplates that a banking company could reduce the amount of its capital stock available for its bank in any city or town below the amount it is required to have for its bank in such city or town by the provisions of Section 2697, of the General Statutes. I do not believe it the intent of the law that a branch bank should operate with a capital stock less than that required for a bank to operate in the same town or city.

Yours very truly,

PARK TRAMMELL,

Attorney General.

SUB-DISTRICT SCHOOL TAXES.

Tallahassee, Fla., April 29, 1910.

Hon. A. C. Croom,
Comptroller,
Tallahassee, Florida.

Dear Sir:—

Replying to your letter of the 26th instant, relative to certain unpaid special school district taxes

about which Mr. Jones, Tax Agent of the L. & N. R. R., has written you, I beg to advise that it is my opinion that special school district taxes were not due for the year 1909 unless the sub-school district was established on or prior to January 1st, 1909.

Judging from the order of Judge Wolfe, in the case involving the special taxes in Ponce DeLeon District, it seems that he did not consider that the district had been legally established; if this was his ruling, and the district has not been extended by a subsequent election, then I should think you could only collect the tax on the property within the original district.

Yours very truly,

PARK TRAMMELL,

Attorney General.

TAX COLLECTOR CANNOT CHANGE ASSESSMENT.

- Tallahassee, July 14th, 1910.

Hon. A. C. Croom,
Comptroller,
Tallahassee, Florida.

Dear Sir:—

Replying to your letter of the 11th instant, asking my opinion upon the inquiry of Hon. G. M. Clayton, Tax Collector of Baker County, wherein he says that the tax assessment on a certain tract of land was raised; that printed notice of the raise was not given, but that the party who owned the property did appear before the Board of County Commissioners and have a hearing upon the assessment, and that now the party refuses to pay tax upon the raise; and wherein the Tax Collector asks for your opinion; I beg to say that this presents a judicial question and not one for adjustment by the Tax Collector; therefore, it is not within his authority to make any change in the assessment.

As to the probable legal effect upon the assessment, I have no Florida decisions as a guide, our court never having passed upon this point; therefore, it is difficult to say what would be the outcome before the courts; however, I doubt if the omission would invalidate the assessment in view of the fact that the owner had a hearing before the Board.

I am returning letter from Mr. Clayton.

Yours very truly,

PARK TRAMMELL,
Attorney General.

COUNTY CANNOT PAY CLERK HIRE FOR DEPUTY
CLERK.

Tallahassee, Fla., July 15, 1910.

*Hon. Ernest Amos,
State Auditor,
Tallahassee, Fla.*

Dear Sir:—

Replying to your letter of the 16th ultimo, wherein you wish to know if under the law counties are authorized to pay a deputy clerk of the Circuit Court a stipulated salary, and also where the sheriffs are entitled to charge and collect a regular per diem of one dollar for each day in the year for horse hire, and also charge the county mileage for serving criminal process, where the costs are paid by the county, I beg to advise that I find no authority in the law for the county to pay a stated salary to the deputy clerk. The law only authorizes the County Commissioners to pay the clerk a stipulated salary.

As to the sheriff's allowance for horse hire, it is my impression that the law does not contemplate that the county shall hire a horse by the month or the year for the sheriff, but intends that this fee shall be paid when a sher-

iff finds it necessary to use an extra horse in addition to his ordinary equipment necessary for the performance of his duties. As far as the counties with which I am familiar, none of them hire a horse by the month or year for the sheriff.

Respectfully submitted,

PARK TRAMMELL,
Attorney General.

JUSTICE OF THE PEACE—CRIMINAL JURISDICTION.

Tallahassee, Fla., August 23rd, 1910.

Hon. Albert W. Gilchrist,
Governor,
Tallahassee, Florida.

Dear Sir:—

Answering your inquiry wherein you ask me to advise you as to the criminal jurisdiction of a Justice of the Peace in counties in which county courts have been established, I beg to advise that Section 22 of Article V of the Constitution as amended provides that Justices of the Peace shall have such jurisdiction in criminal cases, except felonies, as may be prescribed by law. By Chapter 4729 of the Acts of 1899, Justices of the Peace were vested with jurisdiction to try any misdemeanor where the punishment was by fine not exceeding five hundred dollars or by imprisonment not exceeding six months. This was the law until the General Statutes were adopted when the law as found in Section 3898 was made to read: "In counties where there are no county courts or criminal courts of record, justices of the peace shall have power to hold a court to try and determine all misdemeanors committed in their respective districts punishable by fine not exceeding five hundred dollars, or by imprisonment not

exceeding six months, or by both such fine and imprisonment." It is therefore, my opinion that under the present law as found in the General Statutes, Justices of the Peace have no trial jurisdiction in criminal cases in counties where there are county courts, and that their criminal jurisdiction is limited to that of a committing magistrate.

Respectfully submitted,
PARK TRAMMELL,
Attorney General.

LETTERS OF THE ATTORNEY GENERAL.

The following letters are a few of those that have been written in answer to communications from different city, district, county officers and citizens of the State, requesting information of the Attorney General on various subjects. These letters give to some extent an idea of the numerous and varied requests that are made of the Attorney General for information:

REGISTRATION OFFICER SHOULD BE PROVIDED WITH OFFICE IN COURT HOUSE.

Tallahassee, Fla., Feb. 8, 1909.

Dear Sir:—

I have your favor of the 6th instant, asking if I will advise you as to the authority of the County Commissioners of a county to deprive a county officer, mentioning the Supervisor of Registration, of an office in the court house of the county, and rent the court house, that is the office formerly occupied by the Registration Officer to another person.

The laws of our State do not make any specific provision for the office of the County Supervisor of Registration being in the court house, but provision is made that it shall be at the county-seat, and I should think that this at least implied that he may have an office in the court house.

I have been unable to find, with my limited investigation any cases that hold that the Supervisor of Registration is entitled to an office in the court house; however, I have found two Virginia cases, which holds, that the County Commissioners have no right to rent or lease county property to any one for purposes, not county pur-

poses. These cases are in the 96 Va. 330, Franklin Co. vs. Gills and Johnson, and the 93 Va. 605, Alleghany vs. Parish.

County court houses are county property, erected and maintained for the uses of the county, and all county officers, so far as possible should be allowed to have offices therein.

I do not believe that the County Commissioners are vested with such power by the Statutes, as to permit them to rent a part of the court house to private parties, to the exclusion of an officer of the county; however, this is only my private opinion, as it seems that our courts have never had this matter before them.

Yours very truly,

PARK TRAMMELL.

COUNTY COMMISSIONERS — NO AUTHORITY TO APPOINT TAX COLLECTOR.

Tallahassee, Fla., February 8, 1909.

Dear Sir:—

I am in receipt of your letter of the 4th instant regarding the appointment of a tax collector for your county. In reply thereto, I beg to say that the County Commissioners had no authority to appoint a collector. In my opinion you would be entitled to commissions from the time you received your commission as collector and made demand for the books. I don't believe, however, that you would be entitled to the commissions for the collections made by the man appointed by the Commissioners prior to your commission as collector. Your authority began only from the date of your commission issued upon your qualifying.

I beg to inform you that the above is in no wise official as the Attorney General has no authority to advise county officials or private individuals and an opinion

from me is no more binding than that of any other lawyer. I am pleased, however, to extend to any of our citizens the courtesy of advising them in an unofficial way.

Yours truly,

PARK TRAMMELL.

NON-RESIDENT SUBJECT TO HUNTER'S LICENSE.

Tallahassee, February 17, 1909.

My Dear Sir:—

Your letter of the 16th instant, asking my opinion of the present game law with reference to collecting licenses, and asking if the Game Warden is authorized to collect a license from one who lives in another State, etc., duly received.

Section 3755, of the General Statutes of 1906, provides that all persons who are not citizens of the State shall pay a tax of ten dollars before they are authorized to hunt in this State.

Yours very truly,

PARK TRAMMELL.

NO LAW AUTHORIZING MINING PHOSPHATE IN PUBLIC WATERS.

Tallahassee, February 22, 1909.

My Dear Sir:—

Your letter of the 17th instant, addressed to the Commissioner of Agriculture, with reference to the mining of phosphate in the rivers and lakes of this State, and what steps are necessary in order to acquire the right to mine the same, has been transferred to this office for reply.

Chapter 4980, of the Acts of 1901, which was an amendment to Section 1, of Chapter 4179, Acts of 1891, pro-

vided for the mining of phosphate in the navigable waters of the State. But the General Statutes of 1906 seems to have been compiled without including this provision of law therein, so far as I have been able to ascertain, and, therefore, we seem to be without any law on this subject. The Act, Chapter 5372, expressly enacting these General Statutes, provides that every statute of a general or permanent nature that is not included therein is repealed.

I beg to call your attention to the case of State vs. Black River Phosphate Company, 32 Fla. 82, in which the matter of the rights of riparian owners under Chapter 791, Acts of 1856, is considered. This Act was brought forward in the General Statutes as Section 643.

Yours very truly,

PARK TRAMMELL.

WHEN FUNDS DERIVED FROM HIRE OF CONVICTS TRANSFERRABLE.

Tallahassee, Fla., Feb. 22, 1909.

Dear Sir:—

I am in receipt of your letter of the 20th instant, asking whether or not the County Commissioners, in case of surplus fund on hand, have authority to expend any of such surplus fund in the building of a county school.

In reply thereto, I beg to say that Chapter 5699, of the Acts of 1907, authorizes the transfer of any surplus fund derived from the hire of State convicts to the School Fund or any other fund or funds. With this exception there is no other fund that can be so used.

Yours very truly,

PARK TRAMMELL.

CHURCH PROPERTY EXEMPT FROM TAXATION.

Tallahassee, Fla., February 22, 1909.

Dear Sir:—

Church property is exempt from all taxation under Section 431, of the General Statutes. This law applies to cities and towns, as well as to State and county.

Yours very truly,

PARK TRAMMELL.

ROAD DUTY—LAW GOVERNING.

Tallahassee, February 24, 1909.

Dear Sir:—

I am in receipt of your letter of the 23rd instant, and in reply thereto beg to say that Section 845, of the General Statutes, provides that every able-bodied male person over the age of eighteen years and under the age of forty-five years, resident in any county in this State for thirty days, shall be subject and liable to work on the roads and bridges in such county for *not more* than eight days in each year; provided, that each person so subject to road duty may perform such service by an able-bodied substitute over the age of sixteen, or in lieu thereof may pay to the road overseer the sum of one dollar for each day he is required to work.

Section 850, of the General Statutes, provides as follows: "In any county in this State where the Board of County Commissioners may deem it advisable and for the public good, they shall at the time for levying county taxes for county purposes, levy a special tax for public roads, bridges and river crossings, not to exceed five mills on the dollar on all, real and personal property in the county subject to taxation, which tax shall be assessed and collected as other taxes of the county; and the money arising therefrom shall be paid into the County Treasury

as a special fund, to be expended under the direction of the County Commissioners solely for the purpose of maintaining, working, repairing and keeping in good condition the public roads, bridges and river crossings of the county and purchasing suitable tools, implements and materials, teams, wagons, camp outfits and stockades for the use and safe keeping of the convict force as may be found necessary in the proper carrying out of this work, and for the employment of such additional labor as may be deemed necessary. * * * No Board of County Commissioners shall levy tax as prescribed in this chapter if a majority of the registered voters of said county, by petition, shall oppose said tax levy."

You ask whether or not the County Commissioners has the right to take a stipulated amount in cash in advance from each person so subject to road duty. If you will notice the latter part of the above Section 845, you will observe that such person is required to work the road himself or furnish a substitute over the age of sixteen, or pay to the road overseer one dollar for each day he is required to work, whether it be eight days or less than eight.

Section 850, of the General Statutes, merely shows how the roads are worked by taxation, and I have submitted same above for your information and for reference.

A compilation concerning roads and bridges and duties of the County Commissioners has been prepared by the Attorney General and furnished to each County Commissioner by the Secretary of State, and your predecessor is required under the law to turn same over to you; otherwise, you will have to buy one from the Secretary of State, price of which is one dollar.

Section 855, of the General Statutes, provides that "In any county in this State where the County Commissioners shall decide to levy a tax for the purpose of keeping in repair the public roads and bridges, as provided for in Section 850, no person residing in said county who pays the tax in said county shall be required to work the roads

and bridges in said county, but shall be exempt from road duty where said Commissioners shall levy a tax of more than one mill for the purpose of keeping in repair and working the roads and bridges in said county.

Yours very truly,

PARK TRAMMELL.

PUBLICATION OF LEGAL NOTICE.

Tallahassee, Fla., March 1, 1909.

Dear Sir:—

Your letter of the 26th ultimo received.

In reply thereto beg to advise that according to my understanding of the law, notices that are required to be published thirty days, should be published for a sufficient number of weeks to cover a period of thirty days from the first insertion to the date of sale. If it provides a publication of four weeks, then it should be published twenty-eight days from the first insertion to the date of sale.

Yours very truly,

PARK TRAMMELL.

COURT'S JURISDICTION OVER NAVIGABLE STREAM.

Tallahassee, Fla., March 8, 1910.

Dear Sir:—

Your letter of the 6th instant received, and in reply beg to advise that Section 1387 of the General Statutes provides that whenever the territorial jurisdiction of any court extends to the bank of any navigable water, the court shall have jurisdiction across said water from shore to shore, and when the territorial jurisdiction of any court extends to the opposite bank of any navigable water, such courts shall have concurrent jurisdiction.

Yours very truly,

PARK TRAMMELL.

QUALIFICATION VOTERS SPECIAL ELECTION.

Tallahassee, Fla., March 13, 1909.

Dear Sir:—

Your letter of the 12th instant received and would have been answered on yesterday, except for my absence in Jacksonville, from which place I have just returned.

Answering your inquiry as to the qualification of voters in a special election, I beg to say that the qualifications are identically the same as for a general election. That is to say, a person to be qualified to vote must have paid his poll tax for two years next preceding the year in which such election is held, and said poll tax *must have been paid on or before the second Saturday in the month immediately preceding the day of election*. In the election which is to be held in your county on the 16th instant, it would be necessary to have paid the poll tax on or before February 13th, 1909.

You will find the law set out in full, touching upon the qualifications of voters in Section 170 and 202 of the General Statutes of the State of Florida.

Inasmuch as the law does not impose upon me the duty or clothe me with the power to officially advise private citizens or county officers, I would respectfully suggest that this is not an official opinion but merely the extending of a courtesy as a private attorney, which I am always pleased to grant to any county officer or citizen in our State.

Very truly yours,

PARK TRAMMELL.

RESTORATION OF CITIZENSHIP.

Tallahassee, Fla., March 16, 1909.

Dear Sir:—

In reply to your letter of the 13th instant, I beg to

quote you Section 4077 of the General Statutes of Florida which reads as follows: :

"All persons who have received or who may receive full pardon from the Board of Pardons shall be entitled to all the rights of citizenship enjoyed by them before their conviction, whether the pardon is granted before or after the expiration of the sentence or payment of the penalty."

Yours very truly,

PARK TRAMMELL.

STATE CANNOT LEASE LAKE.

Tallahassee, Fla., March 17, 1909.

Dear Sir:—

I have your letter of the 15th instant stating that you have a client who desires to lease a whole lake from the State for the purpose of fishing therein.

In reply, I beg to say that I do not think one could lease a lake. This class of property is owned by the State by right of its sovereignty, and is held for the uses and benefits of all the people of the State.

Yours very truly,

PARK TRAMMELL.

A GARAGE IF DEALER IN AUTOMOBILES SHOULD PAY LICENSE AS DEALER.

Tallahassee, Fla., March 18, 1909.

Dear Sir:—

I have your letter of the 10th instant in reference to the matter of whether the proprietor of a garage is entitled to sell and exchange automobiles, etc., without taking out an additional license.

From my reading of the law, I am of the opinion that

a person who conducts the business of a dealer in automobiles should obtain a license therefor, as there is nothing in the law to indicate that a person holding a license as a proprietor of a garage is allowed also to be a dealer in automobiles.

With kind regards, I am

Yours very truly,

PARK TRAMMELL.

REGISTRATION BOOKS NOT OPENED FOR SPECIAL ELECTION.

Tallahassee, Fla., March 27, 1909.

Dear Sir:—

I have your letter of the 23rd instant, asking if there is any provisions of law providing for the registration books to be opened prior to an election that is to be held to decide whether or not the sale of intoxicating liquors, wine or beer should be prohibited from sale.

Replying to your letter, I beg to say that I am not advised of any law requiring the registration books to be opened, or providing for them to be opened, in a case where an election is called by the County Commissioners to determine whether intoxicating liquors, wines and beers shall be prohibited from sale.

Yours very truly,

PARK TRAMMELL.

CONSTABLE CANNOT APPOINT DEPUTY.

Tallahassee, Fla., March 29, 1909.

Dear Sir:—

I am in receipt of your letter of the 27th instant, in which you ask if a Constable has a right to appoint a deputy to act under him.

I know of no law authorizing a Constable to appoint a deputy, and do not think that he has the power to do so in the absence of express statutory authority.

Yours very truly,
PARK TRAMMELL.

SETTLERS' ACT.

Tallahassee, Fla., April 12, 1909.

Dear Sir:—

I am in receipt of your letter of the 9th instant, and in reply thereto beg to say that the attorney heretofore representing the Trustees advised them that the Settlers' Act was not binding upon them in view of other statutes. I have not as yet had occasion to investigate the Act thoroughly and, of course, the Trustees are following the advice of their former counsel in matters pertaining to this question.

Yours very truly,
PARK TRAMMELL.

FISHING WITH SEINES PROHIBITED.

Tallahassee, Fla., April 19, 1909.

Dear Sir:—

I am in receipt of your letter of the 17th instant, and in reply thereto beg to say that, under the law, parties cannot fish with seines or set devices except for picnics and home consumption. I do not think the law authorizes fishing for the purpose of sale.

Yours very truly,
PARK TRAMMELL.

TRAVELING AND LOCAL DENTIST LICENSE.

Tallahassee, Fla., April 23, 1909.

Dear Sir:—

I am in receipt of your letter of the 19th instant, making inquiries relative to license taxes on dentists.

Section 8, of Chapter 5597, of the Laws of 1907, provides that permanently located dentists shall pay a license tax of ten dollars, also that traveling dentists shall pay a license tax of ten dollars. Under this provision of the law, each and every dentist practicing in this State is required to pay a license; and the fact that a person is an assistant dentist does not relieve him from paying the license.

The construction of this law, as held by the Comptroller, in whose department the matter properly belongs, is that a person holding a State license as a permanently located dentist may practice only in the county where the license is obtained, and a person holding a traveling dentist's license may practice in any county in the State without an additional license, and that a person holding either of these two kinds of State license would not be permitted to practice in any county without first having obtained a county license, as provided by law.

A county license is required in each county where a person practices his profession.

Yours very truly,

PARK TRAMMELL.

RESTORATION OF CITIZENSHIP.

Tallahassee, Fla., April 19, 1910.

Dear Sir:—

I am in receipt of your letter of the 15th instant, relative to desiring to be restored to citizenship, etc. In reply, I beg to say that the proper

steps would be to give notice as provided for by the statute for applications for pardon, and due course make the application for pardon.

Yours very truly,

PARK TRAMMELL.

COUNTY SCHOOL BOARDS FIX MILLAGE.

Tallahassee, Fla., May 14, 1909.

Dear Sir:—

I am in receipt of your letter of the 13th instant, asking for my opinion as to whether the County Commissioners have any right to regulate the levy of millage to run the public schools of the county.

Sub-division 14, of Section 347, of the General Statutes, provides that the County School Board shall fix the millage for school purposes.

Yours very truly,

PARK TRAMMELL.

ASSESSMENT AND COLLECTION TAXES, SCHOOL DISTRICT, ON RAILROADS.

Tallahassee, Fla., June 7, 1909.

Dear Sir:—

I am in receipt of your favor of the 7th instant, stating that the L. and N. Railroad Company refuses to pay special school district tax for your district, and asking me as to who is the proper officer to take the matter up.

Section 411, of the General Statutes, provides as follows:

“It shall be the duty of the County Commissioners to order the Assessor to assess, and the Collector to collect, the amount legally assessed upon the property of the spe-

cial district, at the rate of millage designated by the Board of Trustees, and pay the same to the County Treasurer. It shall be the duty of the Comptroller of the State to assess all railroads and railroad property, together with telegraph lines and telegraph property, situated in such special tax school district, and to collect the taxes thereon in the same manner as required by law to assess and collect said taxes for State and county purposes, and to remit the same to the Treasurers of the counties, to be by them held to the credit of each special tax school district fund, and to be paid out as hereinafter provided."

The above seems to be the law relative to the collection of special taxes in special tax school districts.

Yours very truly,

PARK TRAMMELL.

CANNOT LOAN SPECIAL SCHOOL DISTRICT
FUND.

Tallahassee, Fla., July 10, 1909.

Dear Sir:—

Your letter of the 8th instant addressed to Hon. A. C. Croom, Comptroller, has been handed to me with the request from him that I advise you upon the subject of inquiry.

I beg to advise that the funds raised within a Special School District, are raised for that particular district, and the law requires its expenditure within that district alone. This being true, it is my opinion that the funds of the Special District cannot be loaned to the General Fund or for any other purpose than that contemplated by the law.

Yours very truly,

PARK TRAMMELL.

CITY ENTITLED TO ONE-HALF SPECIAL ROAD
TAX.

Tallahassee, Fla., July 16, 1909.

Dear Sir:—

Your letter of the 16th instant addressed to Hon. A. C. Croom, Comptroller, has been delivered to me with the request that I reply to the same.

You desire to know what proportion of a Special Road Tax an incorporated city or town is entitled to under the law.

A city or town is entitled to one-half of the amount realized from a special road tax on the property within the limits of such incorporated city or town, as appears from the books of the Tax Collector of the county. The Supreme Court has rendered no decision in which it lays down the law that a town has the right to all the special road tax collected on the property within such town.

Yours very truly,

PARK TRAMMELL.

ESTABLISHMENT NEW ELECTION DISTRICTS.

Tallahassee, Fla., June 12, 1909.

My Dear Sir:—

I am in receipt of your letter of the 10th instant, stating that a petition had been presented to the County Commissioners asking for the creation of a new election district, and that the Commissioners are of the opinion that it would be irregular to establish such new district except in a year in which a general election is held, and asking for my opinion in regard to the matter.

Without entering into a full discussion of the matter, beg to advise that the construction of the County Commissioners upon the law relating to the creation of new

election districts is, in my opinion, correct. And such new district must be established before the first day of July in the year of any general election.

Yours very truly,

PARK TRAMMELL.

PERCENTAGE ALCOHOL REQUIRED ON LABEL
EXTRACTS.

Tallahassee, Fla., July 14, 1909.

Gentlemen:—

I am in receipt of your favor of the 13th instant in which you state that you notice that certain extracts that you have been handling for years, now has the percentage of alcohol stated on the label, and desiring to be advised as to whether you may continue the sale of the goods.

The Food and Drug Act of Florida, which was passed at the session of the Legislature of 1907, same being Chapter 5662 Laws of Florida, provides that any food, drink or drug that has any alcohol therein, shall have the percentage of such alcohol stated on the label, and this is the reason why your goods has the percentage stated on the label, otherwise it would be misbranded under the above law.

There has been no change in any other law that would effect the sale of extracts so far as I am advised; however, if you desire to investigate further I would suggest that you take the matter up with the State Attorney of your circuit, whose duty it is to prosecute violations of the criminal statutes.

Yours very truly,

PARK TRAMMELL.

ASSESSMENT OF TRAM ROADS.

Tallahassee, Fla., July 22, 1909.

Dear Sir:—

Replying to your letter of the 20th instant, I beg to say that when a log road or spur track is used only for the transportation of the property of the owner and is not used for the conveyance of freight or passengers for a fixed or agreed upon consideration, i. e. is not open to the public, or any of the public as a public utility, or to be used by the public for a consideration, it is subject to assessment by the Tax Assessor of the county wherein it is located, and when so assessed the payment of the taxes thereon should be enforced by levy and sale in the same manner as other property so assessed.

The assessment of railroads that are common carriers, and telegraph lines operated for the benefit of the public for a consideration is made by the Comptroller upon the returns submitted according to law. If for any reason the Comptroller rejects the returns so made, then he calls to his assistance the Attorney General and State Treasurer.

Yours very truly,

PARK TRAMMELL.

CUSTODY COURT HOUSE AND JAIL.

Tallahassee, Fla., August 12, 1909.

Dear Sir:—

I find your letter of the 4th instant upon my desk upon my return to the city after an absence of several days on official business.

Replying to your inquiry beg to say, that your fees in lunacy proceedings are fixed by Chapter 5457, Laws of 1905, page 1582 of General Statutes, and are the same as are prescribed for like services in criminal cases.

As to the Sheriff being allowed a guard at the county

jail, said guard to be paid by the county, beg to say that I do not know of any law that provides for such guard.

The County Commissioners are the custodians of the county court house and jails; however, I think it is customary for the Commissioners to entrust the care of the court house to the Clerk of the Circuit Court as Clerk of the Board of Commissioners and entrust the jail to the Sheriff.

Yours very truly,

PARK TRAMMELL.

SETTLERS ACT NOT RECOGNIZED BY TRUSTEES
I. I. FUND.

Tallahassee, Fla., Sept. 17, 1909.

Dear Sir:—

Your letter of the 16th instant received and noted.

While the law (Homestead Act) is on the statute book, for several years the Trustees have been refusing to sell lands under it. This has been done under the advice of Ex-Governor Jennings, who was, as you remember, the attorney for the Trustees all during the Broward administration. He advised the Trustees that the law was invalid and had no binding effect on them. Since he so advised the Trustees have not deeded any lands to any one under what is known as the "Homestead act."

Yours very truly,

PARK TRAMMELL.

JUSTICE OF PEACE MAY WAIVE DEPOSIT FOR
COST.

Tallahassee, Fla., Sept. 24, 1909.

Dear Sir:—

I am in receipt of your letter of the 22nd instant.

As to what shall be the general policy of Justices of the Peace in requiring cost or bond for cost in advance,

of course is not within my province to say. But, in my opinion, where a Justice so desires he may issue the process without the requirement of the cost in advance, but when he does so he will do so at his own peril as to whether he can get the cost paid by the county in cases of acquittal.

Yours very truly,
PARK TRAMMELL.

NOTARIES NOT REQUIRED TO FILE COMMISSION WITH CLERK.

Tallahassee, Fla., November 20, 1909.

Dear Sir:—

I am in receipt of your letter of the 18th instant, in which you state that "the Clerk of the Circuit Court of this, Dade, county requires every notary public to have his commission filed for record and recorded in the Clerk's office," and asking for my opinion "as to whether it is necessary for each notary public to go to the expense of having his commission recorded, or whether it would be only necessary to file the commission with the Clerk to be kept in a file prepared for that purpose."

I am not aware of any law that requires a notary public to have his commission filed for record with the Clerk of the Circuit Court, neither do I know of any law that makes it necessary for him to file his commission with the Clerk.

Section 302 of the General Statutes provides that Notary Publics shall give a bond previous to the exercising the duties of their offices. This bond has to be approved by the County Commissioners, but as to the recording of the commission I am not aware of any law providing for it to be done.

With kind regards, I am

Yours very truly,
PARK TRAMMELL.

SCHOOL BOARD PAYS FOR BLANKS AND FEES
ON SPECIAL ASSESSMENTS.

Tallahassee, December 1st, 1909.

My Dear Sir:—

I am in receipt of your letter of the 25th ultimo, in which you ask if the County Board of Public Instruction or the Board of County Commissioners should pay for the blank books, stationery, etc., necessary to conduct the office of Superintendent of Public Instruction. Also, whether the County Board of Public Instruction or the Board of County Commissioners should pay the County Tax Assessor for assessing the taxes of special tax districts.

In reply to these inquiries, I beg to say that I am of the opinion that the County Board of Public Instruction should pay the bills for blank books, stationery, etc., also pay for the assessment of the taxes of special tax districts. That is to say, that the assessment of the special tax should be paid by the County Board of Public Instruction. I am informed by the State Superintendent that this is the way in which the Tax Assessor is paid.

With kind regards, I am,

Yours very truly,

PARK TRAMMELL.

POSTMASTER CANNOT HOLD OFFICE OF JUSTICE
OF THE PEACE.

Tallahassee, Fla., December 13, 1909.

Dear Sir:—

I am in receipt of your letter of the 10th instant, and in reply thereto beg to say that according to my understanding of the law a postmaster in this State cannot hold the office of Justice of the Peace.

Yours very truly,

PARK TRAMMELL.

FEMALE PRISONERS NOT TO BE LEASED.

Tallahassee, Fla., January 11th, 1910.

Dear Sir:—

I am in receipt of your letter of the 7th instant, asking me to advise you regarding the delivery of female prisoners to lessees under contract, as authorized by Chapter 5963, of the Laws of 1909. In reply, I beg to advise that in my opinion it was the intention of the Legislature that no female prisoner should be hired out, and I understand the Commissioner of Agriculture has put the same construction on this statute.

Yours very truly,

PARK TRAMMELL.

PUBLIC ROADS SHOULD BE OPEN OVER RAILROADS.

Tallahassee, Fla., January 25th, 1910.

Dear Sir:—

I am in receipt of your letter of the 21st instant, in which you ask to be advised if a railroad company has any right to close up a settlement road across its track, where a road has been established for several years.

Section 2870, of the General Statutes, provides in part as follows:

*"All fences enclosing railroads in this State shall be substantially built, and shall be of such kind as to prevent the intrusion of any and all cattle, horses, hogs or other domestic live stock upon the track of said railroad, and there shall be a space left for all road crossings, either neighborhood or public, at least thirty feet wide, with such stock guards on both sides of such road crossing as will prevent cattle, horses, hogs or other domestic live stock entering such railroad enclosure. * * *"*

It would seem that from the language of the part of

the section that I have underscored that the law contemplates that neighborhood road crossings across railroad tracks are allowed.

Yours very truly,

PARK TRAMMELL.

APPOINTMENT TO VACANCIES IN ELECTIVE
OFFICES.

Tallahassee, Fla., January 9th, 1910.

Mr. R. E. Bray,
Jensen, Florida.

Dear Sir:—

Replying to your letter of the 17th inst. I beg to advise that Section 6 of Article XVII of the Constitution provides that the term of office to fill vacancies in elective offices shall extend only to the election and qualification of a successor at the ensuing general election.

Section 6 of Article VIII of the Constitution provides that each county shall have a Superintendent of Schools. From these provisions of the Constitution, it is my opinion that a Superintendent should be elected in the ensuing election to fill out the unexpired term.

As to the officers of your County Court, I would suggest that you write the Governor who made the appointments and ascertain his views.

Yours very truly,

PARK TRAMMELL.

PAY OF COUNTY SUPERINTENDENTS FOR
SCHOOL CENSUS.

Tallahassee, Fla., February 19, 1910.

Dear Sir:—

Replying to your letter of the 18th inst. I beg to advise that I find no provision in the law authorizing the

School Board to pay more than three cents for each name in taking the school census. This certainly seems too little in some counties; yet I find no law authorizing the payment of more.

Yours very truly,

PARK TRAMMELL.

COUNTY PRISONERS SHOULD BE RESTRAINED.

Tallahassee, Fla., February 23rd, 1910.

Dear Sir:—

In the matter of the Board of County Commissioners of Citrus County, desiring to let out all sick and disabled and all women county convicts to individuals free of charge, to be worked as domestic servants in the private families of Citrus County, I beg to advise as it appears from the letter of the Attorney of the Board that the prisoners would practically not be restrained, it is my opinion that to so let out such prisoners, would not be within keeping with the law providing imprisonment penalties.

Yours very truly,

PARK TRAMMELL.

CITIES MAY IMPOSE LICENSE ON OCCUPATIONS NOT TAXED BY STATE.

Tallahassee, Fla., April 19th, 1910.

Dear Sir:—

Replying to your letter of the 18th inst., I beg to advise that under the provisions of Section 2 of Chapter 5597 of the Acts of the Florida Legislature for 1907, a city has a right to impose license on occupations and professions that are not taxed by the State.

Yours very truly,

PARK TRAMMELL.

PARTY PAYING POLL TAX IN ONE MAY VOTE IN
ANOTHER COUNTY.

Tallahassee, Fla., April 21st, 1910.

Dear Sir:—

Your letter of the 18th inst. received.

Answering your questions beg to say that a man who has lived in the State twelve months, and the county six months and has paid his poll tax legally due is entitled to vote when otherwise qualified. If a party moves from one county to another, it makes no difference which he pays his poll tax in, but he must pay it in one or other of the counties.

A person who has moved from one precinct to another should have his registration transferred.

If a man moved into the county from another State after the first day of January 1908 and before the first day of January 1909, he would be entitled to vote upon paying poll tax for 1909.

A person should be legally qualified to vote in any general election before he is entitled to vote in the primary election. I take it that a person should be twenty-one years of age before he is entitled to vote in the primary election.

Yours very truly,

PARK TRAMMELL.

RIGHT OF WOMEN TO HOLD OFFICE.

Tallahassee, Fla., April 23rd, 1910.

Dear Madam:—

Replying to your letter of the 20th inst. I beg to say that I fail to find any authority in our law for a woman to hold office in this State. Our courts have never passed on this question and it would be difficult for me to say what they would decide. Governor Broward did appoint

a lady as Clerk in Dade County but there seems to have been a question as to her right to be an officer, and for this reason in 1907, the Legislature passed a law making legal her acts as Clerk.

I should think that the way to reach this question would be to petition the Legislature to submit a constitutional amendment providing that women shall be qualified to be school officers.

Most respectfully,
PARK TRAMMELL.

EFFORT TO VIOLATE POLL TAX LAW.

Tallahassee, Fla., May 4th, 1910.

Dear Sir:—

Replying to your letter relative to the money which you have on hand from the effort on the part of some one to pay the poll tax for others in apparent violation of the law, I know of no law governing the matter of where the fund should be placed; however, I think that it would be a good idea for you to hold it for thirty or sixty days as a matter of precaution awaiting any further developments and then if the matter continues to stand as it is I can see nothing wrong in you turning it over to the school fund.

From your report to me and your letters there seems to have been an effort to violate the law in regard to the payment of poll taxes, and knowing this as I do from the information you brought to my attention, I expect to turn over the information to the Governor that he may take such steps that he deems proper, if any, to try to detect the apparent violation of the law.

Yours very truly,
PARK TRAMMELL.

OWNERSHIP OF LAKE BED.

Tallahassee, Fla., May 16th 1910.

Dear Sir:—

Replying to your esteemed letter of the 14th instant, I beg to say that Florida has no statutory law on water rights. We are governed by the common law on this subject. This law gives property owners adjoining a navigable lake or stream the right of using the land between their property and the lake for ingress and egress and for the ordinary use of the waters for navigation, but does not give ownership of the land, only to high water mark.

The bed of the lake or stream belongs to the State, and the waters are for the use of the entire public. The State can not sell these rights. Where a lake was surveyed as land instead of water the title goes to the owner of the land.

Yours very truly,

PARK TRAMMELL.

TREASURER NOT ALLOWED COMMISSION ON
BORROWED MONEY.

Tallahassee, Fla., June 9th, 1910.

Dear Sir:—

I am in receipt of your letter of the 4th instant in which you ask to be advised if you as County Treasurer are entitled to commission for cancellation of two warrants issued to cover borrowed money, when such warrants were cancelled by you.

Your inquiry involves the question of whether a County Treasurer is entitled to commissions for receiving and disbursing borrowed money, and while the question has never been determined by the courts of this State, yet the courts of some of the States hold that no

commission should be allowed on borrowed money, and it is my impression that in the light of these decisions our court would most likely hold that a County Treasurer would not be entitled to commissions on receiving and disbursing borrowed money. This is also the holding of the State Auditor, whose duty it is to check up the various offices of the State and counties.

Yours very truly,

PARK TRAMMELL.

TREASURER MAY REFUSE TO PAY UNLAWFUL WARRANT.

Tallahassee, Fla., June 24th, 1910.

Dear Sir:—

I am in receipt of your letter of the 20th instant, asking whether or not you have the right as County Treasurer to refuse to pay warrants issued by the County Commissioners, when it is your impression that such warrants were issued to pay improper bills, and bills the payment of which would be in violation of a resolution adopted by the Board of County Commissioners.

In reply, I beg to say that as long as the County Commissioners issue warrants for a purpose which the law allow them to expend money for and work or materials furnished, I think it within the Board's discretion to issue the warrant and you are not authorized to refuse the warrant. On the other hand, if they issue a warrant for a purpose unauthorized by law for something they did not receive, or there seems to be any fraud in the issuance of the warrant, then you would have the right to refuse to pay it.

Yours very truly,

PARK TRAMMELL.

SALE OF NEAR - BEER.

Tallahassee, Fla., July 13th, 1910.

Dear Sir:—

I am in receipt of your letter of the 11th instant, and in reply beg to advise that there is no license on "near-beer joints," but if "near-beer" is intoxicating such a business would require the taking out of the regular license for selling intoxicating liquors.

Yours very truly,

PARK TRAMMELL.

CITY MAY ASSESS RAILROAD PROPERTY WITHIN CORPORATE LIMITS.

Tallahassee, Fla., August 12th, 1910.

Dear Sir:—

Replying to your letter of the 9th instant, I beg to refer you to that part of Section 48, of Chapter 5598, of the Acts of 1909, on page 27, which I think answers your inquiry. My idea is that the city is the proper authority to fix the assessment value on the railroad property within its corporate limits.

While I am always pleased to give any information I can to city and county officials, and take pleasure in giving you my idea of the law upon this question, my opinion is unofficial and not binding upon anyone, as I am not, under the law, the legal adviser of city and county officials.

Yours very truly,

PARK TRAMMELL.

SALE OF DOMESTIC WINES.

Tallahassee, Fla., September 14th, 1910.

Dear Sir:—

I am in receipt of your letter of the 13th instant, regarding the sale of domestic wines in "dry" counties, and

in reply thereto beg to advise that as far as I know the courts have informally held that the sale of all intoxicating liquors, wines and beers is prohibited in "dry" counties, whether domestic or not.

Yours very truly,
PARK TRAMMELL.

LEGAL SALES DAY.

Tallahassee, Fla., October 5th, 1910.

Dear Sir:—

In regard to the sale of property for taxes, beg to say that the first Monday is the legal sales day; in this includes holidays. I think that under the law the sale should have been advertised for the first Monday.

Yours very truly,
PARK TRAMMELL.

SALE OF DOMESTIC WINES IN "WET" COUNTIES.

Tallahassee, Fla., November 28th, 1910.

Dear Sir:—

Answering your letter of the 22nd instant, I beg to advise that Section 6, of Chapter 5597, of the Laws of 1907, page 41, says that makers of domestic wines or domestic brandies shall be permitted to sell the same in quantities not less than one quart without being considered dealers in liquors. This is the law as I understand it in "wet" counties. In "dry" counties, domestic wines cannot be sold. I would suggest, however, that your parties see the County Solicitor before selling domestic wines, as he is the officer who would prosecute in matters of this kind.

Yours very truly,
PARK TRAMMELL.

TERM OF OFFICE—APPOINTED TO VACANCY IN
ELECTIVE OFFICE.

Tallahassee, Fla., December 17th, 1910.

Hon. A. D. Penny,
Fort Pierce, Florida.

Dear Sir:—

Answering your inquiry of the 14th instant, wherein you state that you were appointed County Superintendent of Public Instruction to fill a vacancy caused by the death of the former incumbent; that you did not stand for election to this office in the recent election, but that Mr. J. W. Hodge was duly elected and that commission dated December 9th, 1910, has been issued to him, and asking for my opinion as to whether he should immediately enter upon the duties of the office or wait until the county officers generally assume their duties on the first Tuesday after the first Monday in January, 1911, I beg to advise that Section 6, of Article XVIII, of the Constitution, provides that "The term of office for all appointees to fill vacancies in any of the elective offices under this Constitution shall extend only to the election and qualification of a successor at the ensuing general election."

The office of County Superintendent of Public Instruction being one of the elective offices provided by the Constitution, it is my opinion that Mr. Hodge, immediately upon his election and qualification, was entitled to enter upon the duties of the office and that his commission became operative from date of its issuance.

Yours very truly,

PARK TRAMMELL.

TERM OF OFFICERS APPOINTED TO VACANCY IN
ELECTIVE OFFICE.

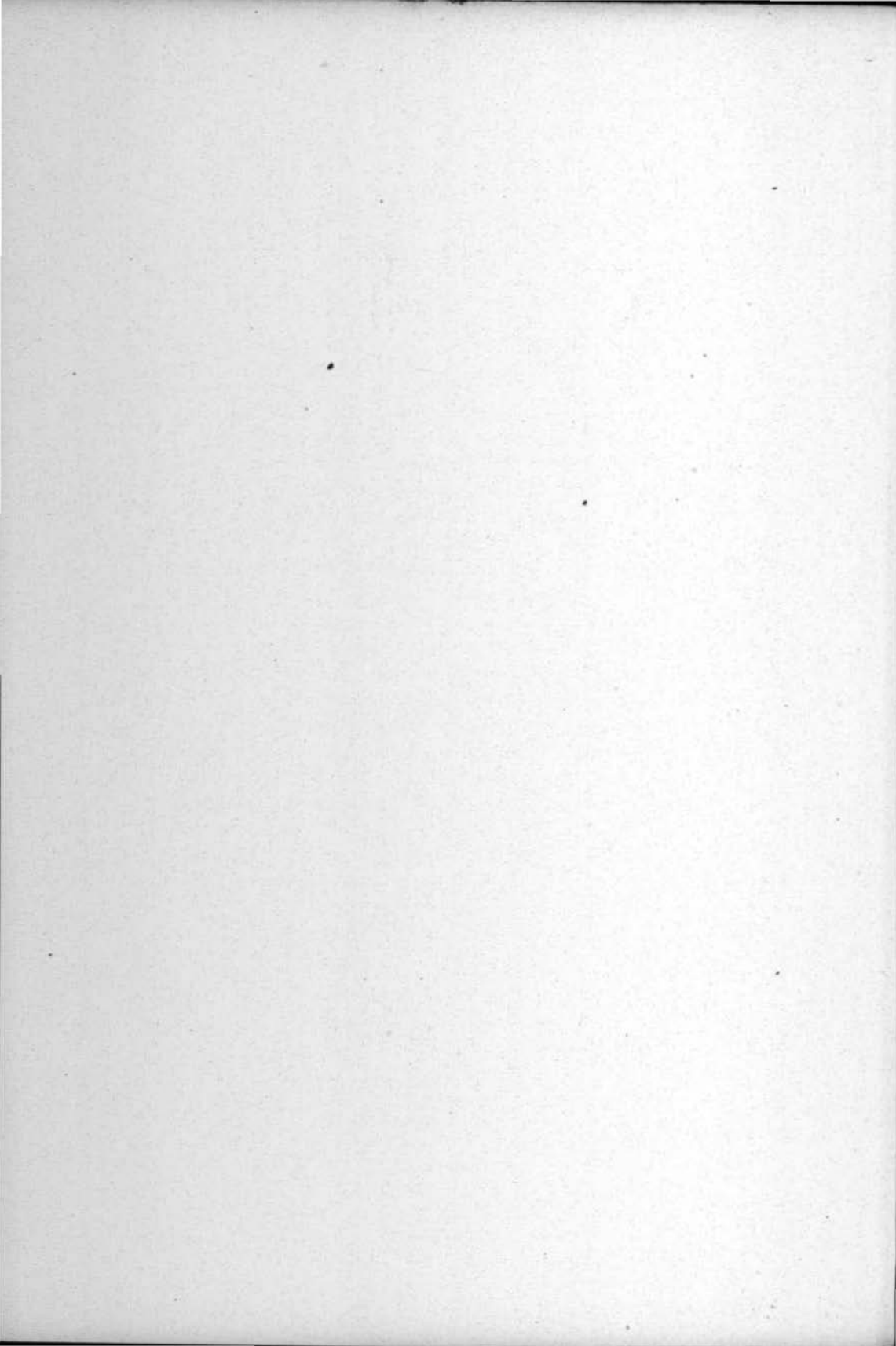
Tallahassee, December 19th, 1910.

Dear Sir:—

Replying to your letter of the 14th instant, wherein you state that when the new County of Palm Beach was created you were appointed as a member of the County School Board and that your commission to this office reads, "to hold his office from the date of this commission until the qualification of his successor, who may be chosen at the next ensuing general election"; that at the general election in November of this year Mr. Kitching was elected as a member of the Board to succeed you, but now states that he will not accept the office, as he was elected against his wishes, and wherein you wish for me to advise you as to how long you shall fill the office under your present commission, I beg to advise that under the provisions of Section 7, of Article VIII, of the Constitution, Mr. Kitching is allowed sixty days in which to qualify. If he fails to qualify within that time, then the office becomes vacant and may be filled by the Governor. However, I think you could hold on until the vacancy is filled. At the expiration of the sixty days within which Mr. Kitching has to qualify, I should think it proper for you to take up with the Governor the question of an appointment to fill the vacancy.

Yours very truly,

PARK TRAMMELL.



INDEX.

A

	PAGE.
Appropriations for Department of Attorney General.....	8
Appointive offices	35
Authority over county bond election	40
Authority of State Board of Education to select faculty.....	41
Authority of State Board of Control to select faculty.....	41
Alien resident not subject to non-resident license	43
Assessments	57
Automobiles—License on garage	69
Assessment of railroad tax in sub-school district.....	73
Assessment of tram roads	77
Appointment to vacancies in elective offices.....	82

B

Boards, Service of Attorney General on	4
Bond election of county	40
Board of Control, Authority of to select faculty.....	41
Board of Education, Authority of to select faculty.....	41
Bonding of officers by surety companies.....	54
Banks—Stock required	55
Branding of liquors under Pure Food Law.....	52

C

Civil cases	13
Criminal cases	26
Criminal cases dismissed on motion of Attorney General....	33
Criminal cases pending	34
Cases pending upon assuming duties of Attorney General....	17
Cases in re: Board of Drainage Commissioners.....	18
Cases in re. Trustees, Internal Improvement Fund.....	20
County can not pay clerk hire for deputy.....	58
County Commissioners, no authority to appoint Tax Collector	62
County School Board to fix millage.....	73
County convicts should be restrained.....	88

	PAGE.
Convict Fund, When transferable.....	64
Convicts—	
Female prisoners not to be leased.....	81
County convicts should be restrained	83
Church property exempt from taxation.....	65
Courts jurisdiction over navigable streams.....	67
Citizenship, Restoration of.....	68-72
Constables can not appoint deputies.....	70
Custody of court house and jail.....	77
Court house, Custody of.....	77
City license	83
Commissions not allowed to Treasurer on borrowed money...	86

D

Duties of Attorney General	3
Discount on taxes.....	46
Deputy Clerk, Compensation of	58
Drainage Commissioners, Suits against	18

E

Expenses, Attorney General's department.....	9-12
Election for bonding county	40
Election districts, Establishment of	75
Electors, Qualification of at special election.....	68
Electors—paying poll tax in one county and voting in another	84

F

Fish license for non-residents	43
Fishing with seines	71
Fine and Forfeiture Fund, Transfer of to School Fund.....	49
Funds derived from the hire of convicts, transferable.....	64
Flavoring extracts require percentage of alcohol printed on label	76
Female prisoners not to be leased.....	81

H

Habeas corpus cases	34
Horse hire for Sheriff.....	58
Hunter's license	63

I

	PAGE.
Indexing laws	7
Itemized statement of expenses of Attorney General.....	9
Injunctions	23
Intoxicating liquors—	
Sale of by Clubs.....	38
Branding of	52
“Near beer,” Sale of.....	88
Domestic wines, Sale of.....	88
Insurance tax	45
Itinerant vendor's license	47
Inheritance tax.....	48

J

Justice of the Peace—	
Jurisdiction	59
May waive deposit for cost.....	78
Jurisdiction of courts over navigable streams	67
Jails, custody of	77

K

Killing of diseased live stock	50
--------------------------------------	----

L

Lake, Not leasable by State	69
Lake-bed, Ownership of.....	86
Legal Sales Day.....	89
Legal notice, Publication of.....	67
Laws, Indexing of	7
Letter transmitting Attorney General's report	3
Letters of Attorney General	61
Live stock, Killing of by health authorities.....	50
Licenses—	
Tax on non-resident fishermen	43
Sick and Funeral Benefit Insurance Companies	45
Hunters	63
Itinerant vendors	47
Garage	69
Dentists	72
City may impose.....	83

M

	PAGE.
Mandamus	23
Method of appraising animals ordered killed by State Board of Health	50
Mining of phosphate in public waters	63
Millage for school purposes.....	73

N

Navigable streams, Jurisdiction of courts over.....	67
Near beer, Sale of	88
Non-resident fish license	43
Non-residents subject to hunters license	63
Notice, Publication of legal.....	67
Notaries not required to file commission with clerk	79

O

Opinions, Official	35
Opinions, Unofficial	61
Opinions to Governor	35-39-43-48-50-59
Opinions to Comptroller.....	38-43-46-47-50-55-56-57
Opinions to Commissioner of Agriculture	51-52
Opinion to Secretary of State	40
Opinions to State Treasurer	45-54
Opinions to Supt. of Public Instruction.....	41-49
Offices—	
Appointive	35
Registration Officer	61
Right of women to hold.....	84
Terms of in filling vacancies.....	90
Term of when appointed to fill vacancy in Elective office..	91
Post masters can not hold.....	80
Official bonds, Return on	39
Order of service of sentence	51

P

Persons tendering tax money entitled to discount.....	46
Pure Food Law—	
Branding of liquors.....	52
Percentage of alcohol required on labeled extracts.....	76
Phosphate, Mining of in public waters	63
Pensioner's proof—Home Guards.....	43

	PAGE.
Publication of legal notice.....	67
Post Masters can not hold office.....	80
Pay of County Superintendents for school census.....	82
Poll tax—	
May pay in one county and vote in another	84
Effort to violate law	85

Q

Quo warranto	23
Qualification of voters at special election.....	68

R

Railroad tax in sub-school district.....	73
Return of official bonds.....	39
Reward, When earned	50
Registration officer, Office of.....	61
Registration books not opened for special election.....	70
Road duty	65
Road tax—City entitled to one-half of collections.....	75
Roads, Public should be opened over railroad.....	81
Restoration of citizenship	68-72
Right of women to hold office.....	84

S

Sales Day.....	89
Sales, Use of prohibited	71
Sentence, Order of service of	51
Settlers Act	71-78
School Fund investment.....	5
School Fund, Fine and Forfeiture Fund transferred to.....	49
School Taxes, Sub-district.....	56
School millage	73
School Board pays for blanks and fees on special assessments	80
School Superintendents, Pay of for school census.....	82
School Census, Pay of Superintendents for taking.....	82
Supreme Court reports	7
Suits against Board of Drainage Commissioners	18
Suits against Trustees of Internal Improvement Fund.....	20
State Board of Control—Authority to select faculty.....	41
State Board of Education—Authority to select faculty.....	41
Sick and funeral benefit insurance tax.....	45
Surety companies authorized to bond officers	54

	PAGE.
Special tax school district fund.....	74
Sub-district school taxes	56
Special tax school district—Tax on railroads.....	73
Special election—Qualification of electors	68
Special tax road district tax	75
State can not lease lakes.....	69

T

Taxes—

Discount on	46
Inheritance	48
Sub-school district	56-73
Sick and funeral benefit insurance license tax.....	45
Itinerant vendors license tax	47
Special road tax—City entitled to one-half.....	75
Railroad tax in special school district	73
Church property exempt.....	65
Tax Collectors can not change assessments	57
Tax Collector, Appointment of	62
Transfer of Fine and Forfeiture Fund to School Fund.....	49
Tram roads, Assessment of	77
Treasurer not allowed commissions on borrowed money.....	86
Treasurer may refuse to pay unlawful warrant.....	87
Term of office, When appointed to vacancy in elective office.....	90-91
Trustees, Internal Improvement Fund, Suits against.....	20

V

Vacancies, in office, Filling of	35-82
Vacancies, Term of office in filling	90-91

W

Wines, Sale of domestic	88-89
-------------------------------	-------